82-1522



IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1982

No. _____

DONALD E. TYLER,

Petitioner

v.

HARTFORD FIRE INSURANCE COMPANY, COLORADO MEDICAL SOCIETY, WARREN & SOMMER, INC., INSTITUTE FOR CORRECTIVE PRACTICE, HERBERT ROTHENBERG, M.D., WILFRED STEDMAN, M.D., JAMES A. HENDERSON, M.D., JOSEPH H. POYNTER, M.D., CARL McLAUTHLIN, M.D., GALEN MARKS, M.D., ROBERT LARSEN, M.D., WILLIAM BUCKMAN, THOMAS H. MITCHELL, PETER PRYOR, CHARLOTTE PELLETIER, JEAN KOEHLY, BERNADENE POST, GWEN STIEBER, GRANT MILLER, M.D., RICHARD EVANS, TERRY FIELDS, JOHN MOTT, ST. PAUL INSURANCE COMPANIES, AND BRIGHTON COMMUNITY HOSPITAL ASSOCIATION.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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## QUESTIONS PRESENTED

1. Has the petitioner been wrongfully and unlawfully deprived of his right to jury trial to restore his reputation and for damages provided for by the common law, 15 U.S.C. § 15, and 42 U.S.C. §§ 1983, 1985, 1986, and guaranteed by the First, Fifth, and Seventh Amendments of the U.S. Constitution?

2. Did the U.S. Court of Appeals error and abuse discretion in summarily affirming the judgment of dismissal with prejudice by the District Court without a showing or finding that the appeal presented no substantial question in conflict with its own rules?

3. Did the Court of Appeals error and abuse discretion in summarily affirming the judgment of dismissal with prejudice by the district court when the appeal presented substantial issues decided in a manner in conflict with decisions of this Supreme Court and other circuit courts?

4. Did the Court of Appeals error and abuse discretion in dismissing the appeal without a showing or finding that it lacked jurisdiction in conflict with its own rules?

5. Did the Court of Appeals error and abuse discretion in dismissing the appeal when it had jurisdiction and in conflict with its own rules?

6. Did the District Court and Court of Appeals abuse discretion, error, and exceed jurisdiction in conditioning the maintenance of the lawsuit subject of this petition upon the posting of a bond by the plaintiff-petitioner for purposes of defendants in the amount of $48,000.00?

7. Did the District Court error, exceed jurisdiction, and abuse discretion in denying petitioner's motion to strike defendants' motions to assess their attorney fees against the plaintiff-petitioner and in maintaining and continuing that threat against the petitioner for lawful use of federal courts including

this Supreme Court?

8. Did the District Court and Court of Appeals abuse discretion, error and exceed jurisdiction in dismissing the case with prejudice because the unemployed petitioner refused to post a bond in the amount of $48,000.00?

9. Was the direction of the District Court to the petitioner to post a bond of $48,000 an order subject to penalties of Rule 41(b) of the Federal Rules of Civil Procedure?

10. Did the District Court and the Court of Appeals error and abuse discretion in dismissing the case with prejudice based upon Rule 41(b) claiming that the petitioner did not comply with an order to amend the complaint when there was no showing of such an order and when in fact there was no such order?

11. Particularly after finding the complaint stated a cause of action, did the District Court and Court of Appeals error, abuse discretion

and exceed jurisdiction in conflict with the First, Fifth, and Seventh Amendments by imposing unreasonable and impossible conditions for the petitioner to maintain the lawsuit including:

(a) requiring an amended complaint,

(b) requiring the amended complaint to omit the grievances upon which the complaint was based, subjecting it to dismissal for failure to state a claim for which relief can be granted,

(c) requiring a complaint with separate counts and claims as to each defendant, and particularly when the claims are clearly for joint and several liability and for conspiracy by the 24 defendants and many other persons, and

(d) requiring a complaint which would be subjectively intelligible to the judges of the aforementioned courts without objective standards, and when defendants by admissions in arguments obviously understood the complaint?

12. Particularly after finding the complaint stated a cause of action, did the District Court and Court of Appeals error, abuse discretion, and exceed jurisdiction in ordering (a) dismissal of selected allegations of the complaint, (b) the striking of parts and all of the complaint, (c) a bill of particulars under guise of calling it a more definite statement, (d) denial of motions of the petitioner to compel discovery which included denial of virtually any and all discovery from most defendants, and (e) stay of all discovery?

13. When as here the Court of Appeals has predecided the appeal with prejudice, and is manifestly prejudiced against the petitioner and there is resulting closure of federal courts to the petitioner and others in like position, should this Court decide all issues of the appeal?

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PAUL INSURANCE COMPANIES, AND BRIGHTON COMMUNITY HOSPITAL ASSOCIATION, Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Donald E. Tyler, petitioner, prays that a writ of certiorari issue to review the judgment of the U.S. Court of Appeals for the Tenth Circuit entered in the above entitled case on December 16, 1982, with timely filed petition for rehearing denied on January 18, 1983, affirming the judgment of the U.S. District Court for the District of Colorado entered April 28, 1982, of which review by this Court is also sought herein.

## OPINIONS BELOW

Final judgment by the U.S.Court of Appeals denying petition for rehearing is in Appendix A, infra, pages A-1 through A-2. Decision and opinion of the Court of Appeals is in Appendix A, infra, pages A-3 through A-12. Judgment of the district Court denying petitioner's motion to alter or amend judgment is in Appendix A, infra, pages A-13 through A-15. Reporter's transcript of hearing in which order of dismissal issued is in Appendix A, infra, pages A-16 through A-50. Petitioner's waiver of hearing (mailed certified, received by the court April 19, 1982, but not filed by clerk until April 26, 1982) referred to in aforementioned transcript is in Appendix A, pages A-51 through A-55. Petitioners response to enter judgment is in pages A-56 through A-59. Reporter's transcript of proceedings in which cost bond and other impossible conditions to

maintain the action were ordered is in pages A-60 through A-92, infra. Judgment and order of dismissal drawn up by attorneys for defendants entered May 25, 1982, after notice of appeal, are at pages A-192 through A-204, infra.

## JURISDICTION

Final judgment in the District Court was entered April 28, 1982.(A-1) Notice of appeal to the U.S. Court of Appeals for the Tenth Circuit was timely filed in the District Court on May 24, 1982, and in the U.S. Court of Appeals on May 25, 1982. Judgment was entered in the Court of Appeals December 16, 1982. Petition for rehearing was timely filed on December 28, 1982. Final judgment denying petition for rehearing was entered January 18, 1983. Jurisdiction in this Supreme Court is based upon 28 U.S.C. § 2101(c) and Supreme Court Rules 17(a) and

(b), 20.2, and 20.4. Jurisdiction for plenary review of the entire appeal is based upon 28 U.S.C. §§ 1254(1) and 2101(e) and Supreme Court Rule 18. It is submitted that arbitrary closure of federal courts by ordering exorbitiant cost bonds under color and pretense of state statutes, threat to award defendant attorney fees, and imposing impossible conditions as herein presented is of such imperative public importance as to require immediate settlement in this Court which can be obtained only by plenary review. The case subject of this petition concerns a conspiracy which interferes with and prevents justice in essentially every case in state and federal courts in Colorado involving medical malpractice or hospital and medical society abuse of physicians. The petitioner has been denied since 1977 and continues to be denied the right to practice medicine and the public will be

denied his service as long as justice in this case is being delayed and denied.

## CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES INVOLVED

The U.S. Constitution provides:

Preamble: We the People...in Order to... establish Justice,...and secure the Blessings of liberty...

ARTICLE III, section 2: The judicial power (of the United States) shall extend to all cases ... arising under this Constitiution, the Laws of the United States, ... between Citizens of different States ...

ARTICLE IV, section 2: the Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the Several States.

Amendment I: Congress shall make no law ... abridging ... the right of the people ... to petition the Government for a redress of grievances.

Amendment IV: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and

particularly describing the place to be searched, and the persons or things to be seized.

Amendment V : No person shall be ... deprived of life, liberty, or property, without due process of law; ...

Amendment VII : In Suits at common law, ... the right of trial by jury shall be preserved, and no fact tried by a jury, shall otherwise be re-examined in any Court of the United States, than according to the rules of common law.

Amendment VIII : Excessive bail shall not be required,nor excessive fines imposed, ...

Amendment XIV : ... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. ...

Title 15 U.S.C. provides in pertinent part:

§ 1. Every contract, combination in the form of trust or otherwise, or conspirac y in restraint of trade or commerce among the several states ...is hereby declared illegal. ...

§ 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any person or persons, to monopolize any part of the trade or commerce among the several States ... shall be deemed guilty of a felony ...

§ 15. Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee. The court may award under this section ... interest on the actual damages for the period beginning on the date of service of such person's pleading ... the court shall consider only--
(1) ...acted intentionally for delay, or... in bad faith;
(2) ...dilatory behavior...
(3)...delaying the litigation or increasing the cost thereof.

18 U.S.C. § 241 provides:

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or the laws of the United States, or because of his having so exercised the same; or If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured--
They shall be fined not more than $10,000 or imprisoned not more than ten years, or both;
...

Title 42 U.S.C provides in pertinent parts:

§ 1983. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

§ 1985. ...(2) Obstructing justice; intimidating party, witness, or juror. If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property ...; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws; (3)...
the party so injured or deprived may have an action for the recovery of damages,...

§ 1986. Action for neglect to prevent conspiracy. Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceding section (42 U.S.C. § 1985), are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; ...

Colorado Revised Statutes, 1973, provide in pertinent parts:

10-4-109. Non renewal of medical malpractice policies. (1) No insurer shall refuse to renew a policy of medical malpractice insurance unless...advance notice...

12-43.5-102. Establishment of review committee - function. (1) A review committee may be established pursuant to this section to review and evaluate the quality of care being given patients by any physician ... to protect patients against the unauthorized, unqualified, and improper practice of such physician.
(2)...Such a committee may be authorized only by: ... (d) A society or an association of physicians whose membership includes not less than one-third of the medical doctors or doctors of osteopathy licensed...
(3)(a) ... An investigation may relate...or any other matter affecting the quality of care

provided.
(b) (I) If the findings of the investigation indicate substantial lack in the quality of care ...the review committee shall hold a hearing... (II) The physician allegedly offering substandard care shall be notified of such a hearing... (c) After such hearing, the review review committee shall make any recommendations...to the governing board of the hospital or as provided by written bylaws of the hospital or by federal law or regulation . A copy of such recommendations shall be given to the physician allegedly offering substandard care, and he shall have the right to appeal the decision of the review committee to the governing board or other body to which the recommendations are made. (emphasis added)
( Effective date of paragraphs ( 2 ) (d) and (3) (a) is July 1, 1977 , Colo. Sess. L. 1977, p. 667.)

13-16-101. Security for costs. In all actions ...where the plaintiff...is not a resident of this state...before he institutes such suit shall file ...an instrument in writing, of some responsible person being a resident of this state,...whereby such person shall acknowledge himself bound to pay...all costs which may accrue in such action either to the opposite party or to any of the officers of such courts...

13-16-102. Motion to require cost bond. If such action is commenced without filing such instrument of writing...,or if, in any case, the court is satisfied that any plaintiff is unable to pay the costs of suit, or that he is so unsettled as to endanger the officers of the court with respect to their legal demands, it is the duty of the court, on motion of the defendant or any officer of the court, to rule the plaintiff, on or before the day in such rule named, to give

security for the payment of costs in such suit. If such plaintiff neglects or refuses, on or before the day in such rule named, to file such instrument, the court, on motion, shall dismiss the suit. ...

13-17-101 Attorney fees. (1) Subject to the provisions of subsections (2) and (3) of this section, in any suit involving money damages in any court of this state, the court shall award, ...in addition to any costs otherwise assessed reasonable attorney fees.(emphasis added) ... (3) The court shall not award attorney fees among the parties unless it finds that the bringing, maintaining, or defense of the action against the party entitled to such award was frivolous or groundless. ...

13-90-107. Who may not testify without consent - records. ... (d) A physician or surgeon duly authorized to practice... shall not be examined without the consent of his patient...,but this paragraph (d) shall not apply to: ... (III) A review of a physician's services by any of the following: ... (D) A peer review committee of a society or association of phsicians...and only if ...said physician has signed a release authorizing such review;...

(Effective date of III (D) is July 1, 1976)

18-4-412. Theft of medical records or medical information - penalty.

(1) Any person who, without proper authorization, knowingly obtains a medical record or medical information with the intent to appropriate the medical record or medical information to his own use or to the use of another, who steals or discloses to an unauthorized person a medical record or medical information, or who without

authority, makes or causes to be made a copy of a medical record or medical information commits theft of a medical record or medical information. ...
(3) Theft of a medical record or medical information is a class 5 felony.

Federal Rule of Civil Procedure, Rule 41(b):

INVOLUNTARY DISMISSAL: EFFECT THEREOF. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

Tenth Circuit Rule 9(e)

In accordance with 10th Cir. R. 10(e), the court, upon its own motion, and on such notice as it directs, may summarily affirm

the judgment or order appealed from if the appeal manifestly presents no substantial question; may summarily reverse in cases of manifest error; and may dismiss an appeal or other proceeding if it lacks jurisdiction.

## STATEMENT OF CASE

The complaint is printed in Appendix A, infra, pages A-93 through 189. Federal jurisdiction is based upon diversity of citizenship with amount in controversy over $10,000 and claims based upon federal statutes. The plaintiff-petitioner is a citizen of Oregon and none of the defendants are citizens of that state.

The plaintiff, the petitioner here, is a Mayo Clinic-trained, board certified urologist. Two claims for relief, plainly capitalized, are: (1) common law remedy for unlawful interference with business by individuals and pursuant to conspiracy, and (2) outrageous conduct which intentionally inflicted and caused the plaintiff to sustain and suffer severe emotional distress. Encompassed within those claims are

claims under Title 15 U.S.C. and 42 U.S.C. §§ 1983, 1985, 1986. The complaint is complex only because of the number of conspirators, the many unlawful acts committed, and the many ways in which their acts were unlawful. The complaint is clear, concise, and intelligible by objective standards. The complaint necessarily involves other lawsuits because malicious , unlawful interference with the conduct of those lawsuits is subject of the complaint against defendants herein. The petitioner commenced a legal action in the state court against Marks, Larsen, and others in 1975, complaint of which is Exhibit B of the complaint of this case. (pages A-148 through A-153 ) That case arose as a result of a conspiracy which included scheduling of a disciplinary hearing of the petitioner admitted by defendants to be without charges. Judges of the state and federal courts have thus far

supported such gross disregard for due process of law. Notice of the hearing did not specify charges and only stated it was to be about the petitioner's conduct in the emergency room. (Exhibits C and D of Exhibit B of complaint, pages A-149 through A-151, infra) Upon request the petitioner was denied charges. Because he did not appear at the hearing, he was damaged by removal from emergency room call duty, not reappointed to the medical staff of the hospital, and black-listed from other hospitals.

There was and is no legitimate defense for Marks and Larsen in that case and it has accordingly been characterized by lost depositions in the district court, destruction of exhibits and depositions prior to trial in the Colorado Court of Appeals, loss of trial reporters' notes, interference by collusion of attorneys and judges who have acted

without jurisdiction, perjuries, subornations of perjuries, fraudulent documents, and similar abuses to close the state courts to the petitioner. Documentary evidence alone establishes that there was and is no legitimate defense for Marks, Larsen, and the hospital.

Marks and Larsen were each insured for $1,000,000 by Hartford subject to the claims for damages in the aforementioned lawsuit. Defendant Colorado Medical Society has a vested interest because of an illegal contract subject to Title 15 action herein which provides for refund of pemiums to its insured members that are unused to pay Colorado claims. To gain illegal help to defend Marks and Larsen, Hartford published to Dr. Brittain all its files concerning the petitioner including libelous documents and hospital records of patients without their permissions. Brittain, a member of a Colorado Medical Society committee,

republished the contents of the aforementioned libelous documents to defendant members of the committee and lay persons present. That committee was not covered by qualified immunities of C.R.S. 1973, 12-43.5-102, until after it acted against the petitioner subject of this lawsuit because the statute part including the medical society was not in effect. (supra, p.15) The committee had no jurisdiction as to sufficiency of medical records for hypothetical legal purposes. Pursuant to the conspiracy alleged in this lawsuit, the defendants herein used the medical society committee to retaliate and interfere with the petitioner's suing Marks and Larsen which could cause all physicians' malpractice premiums to be greatly increased. By that design, the committee members illegally harassed and threatened the petitioner under color of state law. In violation of C.R.S. 1973, 18-4-412, supra, p. 17, and the

petitioner's 4th Amendment and other rights, they demanded permission to examine the medical records of all persons whom the petitioner had provided care in hospitals. (A-157 through A-179). Without notice of hearing, and without hearing, defendant committee members recommended that the petitioner's professional liability insurance not be renewed. The excuse was "non-cooperation" which required submission to their outrageous, illegal demands. They clearly had no authority to make such a recommendation under C.R.S. 1973, 12-43.5-102, supra, or any other rule or statute. As a proximate result, Hartford imposed the unconcionable condition precedent to renewal of the petitioner's insurance permission to Hartford for it to examine all medical records of patients cared for by the petitioner in breach of ethics, invasions of privacy, in violation of the 4th Amendment, and

in violations of principles codified as a felony in C.R.S. 1973, 18-4-412, supra. (pages A-165 through A-167). As a proximate result, the petitioner's professional liability insurance was not renewed and he was forced to quit practicing medicine and to leave Colorado.

Pursuant to the same conspiracy to cause the petitioner emotional distress and to retaliate and interfere with his lawsuit aforementioned, uniformed municipal police harassed the petitioner in his residence. Defendants harassed and intimidated physicians doing business with the petitioner and his witnesses and potential witnesses,and endorsed checksin a manner designed to cause the petitioner emotional distress pursuant to plan.

After limited discovery was conducted by the petitioner at considerable expense, and all discovery was refused by most defendants, and after motion to compel discovery of defendants was filed, the Court on January 11, 1982 ordered

stay of all discovery. On February 17, 1982 the dist rict court denied motions to dismiss for failure to state a claim for which relief can be granted and motions to dismiss for failure to aver time and place. (pages A-71,73,80) The Court then ordered: (1) petitioner to post a "cost" bond of $48,000 no later than March 15, 1982, (2) dismissal of certain allegations of the complaint, (3) more definite statement, (4) striking of parts and then all of the complaint, (5) separate counts and claims as to each of the 24 defendants, (6) denial of petitioner's motions to compel discovery, and provided (7) leave to amend the complaint,in accord with the inconsistent and impossible conditions imposed, to be filed no later than March 17, 1982. (after bond was due). (A -71 through A-92) As could be expected, the petitioner did not post the exobitant, illegally required bond, and he did not file an amended complaint which would be subject to dismissal for failure to state a claim.

He stood on the complaint which was found to state a cause of action. The district court dismissed the case with prejudice primarily because the petitioner did not post $48,000 bond based upon C.R.S. 1973, 13-16-102, and not upon Rule 41(b), F.R.C.P. (pages A-13 through A-15). The Court of Appeals affirmed that judgment basing it upon Rule 41(b). (pages A-9 through A-12)

## REASONS FOR GRANTING THE WRIT

### A. Affirming of Judgment without Authority and an Abuse of Discretion

Affirmance by the Court of Appeals is provided for in its Rule 9(e), supra page 18. That rule provides for affirmance only if the appeal manifestly presents no substantial question. The rule is penal and subject of strict interpretation and construction. There was no showing in motions to affirm that the appeal presented no substantial question, and

the Court of Appeals made no such finding. Affirmance without supporting findings was clearly an abuse of discretion. Stanley v. Continental Oil Co., 536 F.2d 914 (1976). Only a superficial, erroneous consideration of the leave to amend the complaint was made. Summary dismissal of the appeal was an abuse of discretion without full review of the substantial issues presented briefly in the following paragraphs and review of which are requested of this Court.

B. Dismissal by the District Court and Affirmance by Appeals Court without Authority and an Abuse of Discretion

The Court of Appeals affirmed the judgment of dismissal claiming Rule 41(b), F.R.C.P., supra, p. 18, provided authority. That is in conflict with this Supreme Court's decision in Link v. Wabash R. Co., 370 U.S. 626, 630, 8 L.Ed.2d 734, 738, 82 S.Ct. 1386 (1962)

which determined that rule to "merely authorize the motion by the defendant." The rule is penal and subject to strict interpretation. The rule does not provide for dismissal with prejudice for failure to post a bond of $48,000 or for election to not amend a complaint which was found to state a cause of action.

There was no showing and neither the district court nor Court of Appeals found the conduct of the petitioner to be contumacious or for purposes of delay. The dismissal was in conflict with the Fifth Circuit which determined that dismissal under penal provisions of Rule 41(b) was appropriate only in such circumstances. Wrenn v. American Cast Iron Pipe Co., 575 F.2d 544 (1978). The reason for the unemployed petitioner's refusal to post a bond of $48,000 was not even addressed. His refusal to post a $48,000 so-called "cost" bond in response to a clearly unlawful,

oppressive order issued under color and pretense of a state statute does not constitute contumacious conduct justifying forfeiture of his lawful claim for millions of dollars of damages. 18 C.J.S. pp. 35-36. The order clearly makes the use of federal courts limited to the rich, and does not consider the reason for the petitioner's being unemployed was the unlawful conduct for which he was suing.

The Court of Appeals preferred to base its affirmance of the judgment upon the petitioner's not filing an amended complaint. That was even more abusive, if possible. There was clearly no order to amend the complaint subject to Rule 41(b). No such order was shown, and no such order was ever issued. Only leave to amend the complaint issued. After denying motions to dismiss for failure to state a claim and for failure to aver times and places (pages A-71, 73, 80) the District

Court ordered the complaint stricken. Then the Court stated: "You will have until the close of business on Wednesday, March 17th in which to file a simple, concise and intelligible complaint which corrects the numerous deficiencies mentioned by the Court today, if you so choose." (page A-80) He further added, "The amended complaint, if the plaintiff chooses to file one, is due by the close of business on March 17th." (page A-85). The court's dismissal for failure to file an amended complaint is in conflict with the Fifth Circuit which ruled that dismissal by Rule 41(b) for failure to file an amended complaint was without authority and an abuse of discretion. Mann v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 488 F.2d 75 (1973). Furthermore, the Court stated the case would be dismissed if a bond was not posted on or before March 15, 1982. The petitioner refused to post such a

bond. The leave to amend the complaint by March 17, 1982, was moot. (pages A-78, A-91)

C. Order to post Bond was not an Order Subject to Rule 41(b)

The requirement of a cost bond is more appropriately considered to be condition to maintain the suit. As an order subject to penalties of Rule 41(b) it is clearly even more grossly oppressive than as a fee for maintaining the suit. Among other reasons, there was no reason for the plaintiff to expect such a fee.

D. The Order of Bond and Dismissal Because of Non-compliance was a Gross Abuse of Discretion and a Gross Abuse of Constitutional and Common Law Rights.

Order of bond of $48,000 as a condition to maintain the suit, and particularly subject to penalty of forfeiture of claim for milliaons of dollars of damages by Rule 41(b) and dismissal with prejudice for non-compliance

was an inexcusable, unlawful gross abuse of discretion completely without authority. The common law right to open courts was violated. BLACKSTONE: Commentaries on the Laws of England, Vol. I, p. 141. The Seventh Amendment was violated. Right to trial for damages is a property right taken here without due process of law in violation of the Fifth Amendment. Angle v. Chicago, St. Paul, Minneapolis & Omaha Ry. Co., 151 U.S. 1, 38 L.Ed. 55 (1893). It is in conflict with the decision of this Supreme Court in Boddie v. Connecticut, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed. 2d 113 (1971) and other federal courts. Farmer v. Arabian American Oil Co., 285 F.2d 720 (2nd Circ, 1960); Coady v. Aguadilla Terminal, Inc., 456 F2d 677 (1st Circ, 1972).

The district court, affirmed by the appeals court, acted under color of C.R.S. 1973, 13-16-102, supra p. 16, (A-44, 45). The

statute relates only to courts of the state of Colorado. Costs incurred in federal courts are not within the jurisdiction or interest of the Colorado legislature. The statute does not require or provide for bond for attorney fees and discovery expenses in any courts, including state courts; and acting under such pretense, the district court and appeals court judges violated the principles expounded by this Court in Ex Parte Virginia, 100 U.S. 339, 25 L.Ed. 676 (1879), where similar conduct was found to be criminal. The power to legislate costs, fees, and security for such in federal courts for federal claims and common law actions as herein involving citizens of different states is solely in Congress. Art. III, sec 2, U.S. Constit. The order in this unpublished opinion (A-3) is even in conflict with prior opinion by the same court. National Distillers Prods. Corp. v. Hindech, 10 FRD

229 (D.Colo.,1950). Further, the petitioner was a resident of Colorado when acts subject of the complaint forced him to leave the state, and which was a part of the damages.

In considering it within procedure powers, the district court and appeals court acted in conflict with the decision of this Supreme Court in Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 93 L.Ed. 1528, 69 S.Ct. 1221 (1948) where it was held that bond requirement is substantive and not procedural. (pages A-90, A-198) That case allowed a bond related to costs incurred by the corporation defending against it own stockholders and specifically required by the statute of creation of the right for such suits. Here, suit is based upon common law and federal statutes, and the state statute relied upon does not provide for the bond ordered. The Supreme Court reviewed Cohen circumventing

usual appellate procedures. Issues presented herein are more far reaching. This case allows arbitrary closure of federal courts to non-residents of a state under color of a state statute, and to all persons under color of Rule 83, F.R.C.P. Complete review of the entire appeal by this Court is requested.

No Cause Shown or Found

In conflict with Newell v. O.A. Newton & Son Co., 95 F.Supp. 355 (Dela., 1950), no extraordinary circumstances to justify a bond order were shown or found. Not even complying with C.R.S. 1973, 13-16-102, there was no finding that the plaintiff-petitioner was unable to pay the costs of court or was unsettled.

On February 17, 1982, the Court found: (1) the plaintiff-petitioner is a non-resident of Colorado, (2) there were "threads" in the pleadings that the petitioner is unemployed, (3) the suit is complex, (4) there were

numerous filings, (5) there were exigent circumstances with discovery, and (6) the demand is excessive. (pages A-90 through A-91 )
The order written by attorneys for defendants [practice condemned in Industrial Bldg. Materials, Inc. v. Interchem. Corp., 437 F. 2d 1336 (9th Circ, 1970)] issued after appeal was filed added: (7) numerous state claims which made C.R.S. 1973, 13-16-102 applicable, (8) plaintiff's likelihood of success on merits, (9) number of defendants and nature of claims against each, (10) probable length of discovery process and of the case as a whole, (11) enormous costs of discovery, and (12) the number, nature and results of other cases which this Court has handled wherein this same plaintiff initiated similar cases. (pages A-198 through A-200) Briefly, as to (3) the case being complex is unrelated to docket fees, jury fees, subpoenaes required,

etc., and no connection or expected costs were projected by defendants or the court. Action for damages due to conspiracy, antitrust, and numerous acts constituting outrageous conduct by 24 defendants is admittedly more complex than the usual automobile cases in which insurance companies refuse to pay their obligations. In this and other reasons given for the bond, the petitioner is obviously being penalized because of the mob and number of defendants and the atrocious nature of many acts. As to (4), the filings in the case are entirely due to delay tactics of the defendants. There is clearly no relation to bond requirement. (5) "Exigent" circumstances of discovery is inconsistent with the delays and denial of discovery by the Court. (6) The demand being for "excessive damages" has no relationship to bond requirement. It clearly reveals bias and pre-judgment, or concern with the amount

of expected verdict, an invasion of the role of the jury and violation of the First, Fifth, and Seventh Amendment rights of the petitioner.

(7), the existense of "state" claims making C.R.S. 13-16-102 applicable, reveals desperation. None of the claims are based upon state statutes, but are based upon the common law and encompass federal claims. Reason (8) is the real reason. It is admitted that the petitioner would probably succeed in a jury trial. In a related trial the jury found for the petitioner in the amount of $730,000. (Exhibit L of complaint, p. A-184) There, as here, the judge disagreed with the amount of damages for the destruction of the right to practice medicine and mental suffering, so a new trial was ordered by the Colorado Supreme Court after jurisdiction was legally exhausted. As for reason (9), the number of defendants, there was absolutely no showing

by any defendant of expected costs. Some attorneys represent multiple defendants which alone would reveal that the cost bond of the same amount for each defendant was unjustified and arbitrary. The petitioner is being penalized for being the victim of a mob however well-heeled. Reasons (10) and (11) concerning costs of discovery clearly connect the bond to that purpose which is completely unauthorized by any statute or rule. Reason (12) refers to other cases initiated by the petitioner. The records of those cases are not in evidence. No relevance is apparent, except for admission of liability. The only hearing held in those cases was to obtain the court's order for a stipulated dismissal of two. They were settled for the petitioner for $100,000 against the attorney for defendant herein Brighton

Community Hospital for damages not included in this case. The other case was against an attorney acting in conflict of interest and in collusion with defendant Hartford herein to damage the client, this petitioner. The case was dismissed by the petitioner prior to responsive pleading after withdrawal of that attorney from the case subject of that suit.

Bond Amount Unreasonable and Arbitrary

No cause was shown or found to justify the amount of bond ordered. No itemization of anticipated costs was made in motions for bond in amount of $98,000 and the Court did not state any reason for the amount ordered. It is obvious and clear that the amount was determined in an unreasonable, arbitrary manner and was to be used by the Court in any manner in its pleasing. The amount was obviously calculated to close the federal courts to this petitioner as to this lawsuit

and as to any other claims that he might have.

Bond for Discovery Expenses and Attorney Fees without Authority

C.R.S. 1973, 13-16-102, supra p. 16, does not authorize a bond for attorney fees or discovery expenses. Costs allowed to be taxed against a losing plaintiff in Courts of the United States do not include such fees or expenses. 28 U.S.C. § 1920; Rule 54(d), F. R. C. P. The court's order is also in conflict with Adams Dairy Co. v. National Dairy Products Corp., 293 F.Supp. 1168 (Mo., 1968). The bond ordered coupled with threat to use it for defendants' attorney fees is in conflict with the Fifth and Seventh Amendments, U.S. Constit., and with decisions of this Supreme Court and other circuit courts. Boddie v. Connecticut, supra; Cohen v. Beneficial Industrial Loan Corp., supra; The Baltimore v. Rowland, 75 U.S. 377,

19 L.Ed. 463 (1869); Byram Concretanks, Inc. v. Warren Concrete Products Co., 374 F.2d 649 (3rd Circ, 1967); Gillam v. Shyman, Inc., 205 F.Supp. 534 (Alaska, 1962).

E. THE COURT ABUSED DISCRETION IN DENYING PETITIONER'S MOTION TO STRIKE MOTIONS TO AWARD DEFENDANTS ATTORNEY FEES

Motion for attorney fees was made under color and pretense of C.R.S. 1973, 13-17-101, supra p. 17. The statute is penal, in derrogation of common law, and establishes a new liability for use of courts. It must be strictly interpreted. 82 C.J.S. §§ 389, 393, 394. It clearly states that it applies to courts of the state. The U.S. District Court is not a court of the state. The district court refused to strike defendants' motions for attorney fees and stated it would again entertain those motions. (pages A-36, 37, 44, 48, 203) That is a continuing

threat against this petitioner and against anyone else who might choose to exercise his right to use federal courts. It is clearly an illegal closure of the federal courts under color and pretense of a state statute in conflict with the 1st, 5th, 7th Amendments of the U.S. Constitution, and in conflict with decisions of this and other federal courts. Boddie v. Connecticut, supra; Ex Parte Virginia, supra; Angle v. Chicago, St. Paul, Minneapolis & Omaha Ry.Co., supra; Byram Concretanks, Inc. v. Warren Concrete Products Co., supra. As further reason for this Court's review, if the foregoing is approved and to be condoned, the public has a right to know that this can be expected before they expend large sums and years of time in reliance upon the Constitution.

The threat to award attorney fees was particularly vicious when as here it was coupled with the order to post a bond of $48,000 to be dispensed by the court to the

defendants without common law procedure of trial for malicious prosecution violating the Fifth Amendment and in conflict with this Supreme Court in Boddie v. Connecticut, supra.

F. DISMISSAL OF SELECTED ALLEGATIONS WITHOUT AUTHORITY

Rule 12(b)(6), F.R.C.P., provides for dismissal for failure to state a claim but no rule provides for dismissal of selected allegations. The district court dismissed paragraphs of the complaint numbered 40-53, 56-59, 63-68, and 103. (pages A-71, 73)Those were essential allegations of acts upon which the claims of wrongful intentional interference with business and outrageous conduct were based. They were acts committed for intentional infliction of damage, a prima facie tort whatever the form of pleading. Dismissal was in conflict with this Supreme Court in Aikens v. Wisconsin, 195 U.S. 195, 25 S.Ct. 3, 49 L.Ed. 154(1904). The order

was in conflict with other circuit courts which have held that acts constituting conspiracy must be alleged with particularly. Hoffman v. Halden, 268 F. 2d 280 (9th Circ, 1959); Powell v. Workmen's Comp. Bd. of State of New York, 327 F2d 131 (2nd Circ, 1964). Further, Rule 9 (b), F. R. C. P. requires all averments of fraud to be stated with particularity. The dismissed allegations include particulars of fraud, deceit, and pretext alleged in paragraphs 61, 62, 69, 91 of the complaint.

Allegations were dismissed as being barred by statutes of limitations for libel and slander. (pages A-71, 72) That is an affirmative defense and must be pleaded. Rule 8 (c), F. R. C. P. Dismissal here by motion was in conflict with other circuits and the Colorado Supreme Court. Baker v. Sisk, 1 FRD 232 (Okla, 1938); Topping v. Fry, 147 F. 2d 715 (7th Circ, 1945); Bergeron v. Mansour, 152 F. 2d 27 (1st Circ, 1945); Smith v. Kent Oil Co., 261 P. 2d 149

(Colo, 1953). The dismissal of claims of libel and slander as acts in conspiracy to injure business under color of the Colorado Statute of limitations is in conflict with prior decision of the Court of Appeals for the Tenth Circuit and with the interpretations of the Colorado Supreme Court. Clark v. Machette, 92 Colo 365, 21 P. 2d 182 (1933); Hughes v. Reed, 46 F. 2d 435 (10th Circ, 1931); 53 C. J. S. p. 983; 12 C. J. p. 612. Action for wrongful interference with business can be based even upon true statements made for the purpose of wrongfully damaging business, and dismissal of allegations is in conflict with this Supreme Court in Aikens v. Wisconsin, supra, and U. S. Aluminum Siding Corp. v. Dun & Bradstreet, Inc., 163 F. Supp. 906 (S. D. NY, 1958), and Huskie v. Griffin, 74 A. 595 (N. H. 1909)

Paragraph 103 was erroneously dismissed

for the given reason of no standing to make claims for those individuals named therein. The plaintiff is obviously suing for only his own damages, and the dismissal by feigned illiteracy is in conflict with Associated Industries of New York State v. Ikes, 134 F.2d 694 (2nd Circ, 1943). It properly alleges abuse to the plaintiff's witnesses and the encompassed conspiracy to suborn perjury as a part of the larger conspiracy to injure business. Robinson v. Missouri Pacific Transp. Co., 85 F.Supp. 235 (W.D. Ark, Hot Springs Div., 1949); Annot. 31 A.L.R. 3rd 1438; Newin Corp. v. Hartford Accident and Idemnity Co., 31 N.Y.2d 211, 333 N.E.2d 163 (1975). It clearly alleges acts maliciously inflicted upon supporters of the petitioner to intentionally cause the petitioner severe emotional distress and interfere with

prosecution of lawsuits designed to restore his ability to practice medicine.

Dismissal of allegations was without authority and denies the petitioner right of trial of his grievances in violation of the 1st, 5th, and 7th Amendments of the Constitution.

G. STRIKING OF PARTS AND ALL OF COMPLAINT WITHOUT AUTHORITY

Rule 12(f), F.R.C.P., provides, "... the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." The district court strikes allegations of the complaint if they are "insufficient" or "argumentative," in conflict with Card v. Elmer C. Breur, Inc., 42 F.Supp. 701 (Oh, 1941); Bowles v. Krause Milling Co., 62 F.Supp. 244 (Wis, 1945); Courteau v. Interlake S.S.Co., 1 FRD 429 (Mich, 1940). (see pages A- 77, 78)

In its striking of parts and all of the complaint, the district court conflicts with the following interpretations of Rule 12(f) in courts of other circuits. Striking is a drastic measure to be used only when required for justice, is not favored, is to be used sparingly, and the authority is strictly construed. Butler v. Pollard, 482 F.Supp. 847 (Okla, 1979); Fuchs Sugars & Syrups, Inc. v. Amstar Corp., 402 F.Supp. 636 (NY, 1975); Brown & Williamson Tobacco Corp. v. U.S., 201 F.2d 819 (6th Circ, 1953); Augustus v. Bd. of Pub. Instruct., 306 F.2d 862 (5th Circ, 1962); Johnson v. Am. Aviation Corp., 64 FRD 435 (N.D., 1974); Clark v. Atlanta University, Inc., 65 FRD 414 (Ga., 1974). Any doubt as to motion to strike should be resolved in favor of denying the motion. Daughtery v. Firestone Tire and Rubber Co., 85 FRD 693 (Ga, 1980). This is particularly true in big cases such as

antitrust actions. Federated Dept. Stores, Inc. v. Grinnell Corp., 287 F.Supp. 744(NY,1968); United States Dental Institute v. Am. Assoc. of Orthodontists, 396 F.Supp. 565 (Ill.,1975); Van Dyke Ford, Inc. v. Ford Motor Co., 399 F. Supp. 277 (Wis,1975); South Side Drive In Co. v. Warner Bros. Dist. Corp., 30 FRD 32 (Pa,1962). In order to strike it must be clear that the portion stricken has both no bearing on the subject matter of litigation and that its inclusion will unduly prejudice the other party. FRA S. p. A. v. Surg-O-Flex of America, Inc., 415 F. Supp. 421 (NY,1976); Pittson-Luzerne Corp. v. U.S., 86 F.Supp. 460 (Pa,1949). Allegations concerning particulars of fraud should not be stricken. Rule 9(b), F.R.C.P.; Canadian Ingersoll-Rand Co. v. D. Loveman & Sons, Inc., 227 F.Supp. 829 (Oh,1964). Allegations of evidential facts in cases involving complex issues, although unnecessary under rule of brevity, are not stricken if not prejudicial.

Randolph Laboratories, Inc. v. Specialties Development Corp., 62 F.Supp. 897 (NJ, 1945). Allegations providing better understanding of a claim for relief by providing background facts are not to be stricken. Hoffman Motors Corp., v. Alfa Romeo S.P.A., 244 F.Supp. 70 (NY, 1965); U.S. v. Crown Zellerbach Corp., 141 F.Supp. 118 (Ill., 1956); Fuchs Sugars & Syrups, Inc. v. Amstar Corp., supra; U.S. use of Deane Rowley Const. Co. v. Rowley Const. Co., 2 FRD 6 (RI, 1941); Groves v. Paden City Glass Mfg. Co., 2 FRD 300 (W.Va., 1942). Striking is not to be used to determine disputed substantial questions of law. Augustus v. Bd. of Pub. Instruction, supra.

The Court ordered stricken paragraphs 55, 60 and 75-79 and then the entire complaint. There was no showing or finding that the stricken parts were within Rule 12(f) (pages A-77 through A-80)

The district court is in conflict with other circuits in using striking here to make meaningless and to dismiss all or part of a complaint. Egan v. Pan American World Airways, Inc., 62 FRD 710 (Fla, 1974); Mahoney v. Bethlehem Engineering Corp., 27 F. Supp. 865 (NY, 1939).

H. MORE DEFINITE STATEMENT ORDERED WITHOUT AUTHORITY

Motions for more definite statements by defendants were in reality motions for bills of particulars. They were requests for details and particularly for facts solely within their knowledge. Order of such under guise of "a more definite statement" is in conflict with Rule 12(e) as amended in 1946 and Zimmerman v. Fillah, 5 FRD 80 (DC, 1946).

It has been found in other circuits to be an abuse of discretion where as here Rule 12(e) was used to require plaintiff to amend his

complaint which was sufficient to withstand a motion to dismiss. Mitchell v. E-Z Towers, Inc., 269 F.2d 126 (5th Circ, 1959); similar Hodgson v. Virginia Baptist Hosp., Inc., 482 F.2d 821 (4th Circ, 1973).

No specific allegations were found by the Court to be unintelligible. There is no reason all allegations cannot be admitted, denied, or answered that due to lack of information they are denied. That has been held by other federal courts to be all that is required as far as Rule 12(e) is concerned. Ehrman v. U.S., 4 FRD 29 (NY, 1941)

I. ORDER TO SEPARATELY STATE CLAIMS AND COUNTS AS TO EACH DEFENDANT WAS ARBITRARY, UNREASONABLE, IN ABUSE OF DISCRETION

The appellant was ordered to separately state claims and counts as to each defendant in the amended complaint required by the court.

(pages A-78 thorugh A-80). That is unreasonable and inconsistent with the basic nature of the lawsuit. Conspiracy is plainly alleged, and joint and several liability for all acts is alleged. The two claims for relief, already in separate counts, clearly apply to each and every defendant. The order conflicts with Lowe v. Consolidated Edison Co., 1 FRD 559 (NY, 1940). The order oppressively requires massive, overwhelming paper work and would increase the length of the complaint approximately 20 times.

J. REQUIREMENT OF AMENDED COMPLAINT UNREASONABLE AND ABUSE OF DISCRETION

The requirement of an amended complaint violates the petitioner's 1st and 7th Amendment rights to present his grievances and trial of such. By reasonable objective standards, there is no reason that a reasonably literate person cannot understand the complaint. There is no

reason to believe that it was not understood. The order of dismissal written by attorneys after the appeal was filed based the bond order upon the "nature of the claims asserted against each," admitting understanding. The Court found the complaint stated a cause of action. The length is necessarily due to the number of defendants, necessary allegations of relationships between agents, principals, and parties, the numerous acts committed, and the illegalities of such acts. Saying something is verbose and lengthy is not the same as finding a violation of Rule 8(e), F.R.C.P. Contrary to the Appeals Court (page A-12), the District Court did not find that the complaint violated Rule 8(e) (see pages A-78 through A-82), and affirmance based upon such a non-existent finding is an abuse of discretion. The Courts do not cite any allegation as unintelligible, typical of cases dismissed with the pretext, and they do not

choose to publish the opinions.

The district court presented inconsistent criticism of the complaint, and then ordered impossible conditions as to the amended complaint required. The court complained of the length of the complaint. (A-66) Then he required more specificity of the damage to the petitioner's "trade" due to violations of antitrust laws. (A-76) That is in conflict with Gretener, A.G. v. Dyson-Kissner Corp., 298 F.Supp. 350 (NY, 1969). The complaint would be increased greatly in length by the ordered separate counts and claims as to each of the 24 defendants. (A-81, 82) After denial of motions directed to failure to aver time and place (A-80), the court ordered enlargement by requiring the plaintiff-petitioner to set forth time and place as to all allegations including those known only to defendant conspirators. (A-82) The court required

enlargement in requiring details of fiduciary duties and contracts which included particulars already supplied defendants in memoranda and in answers to interrogatories. (A-82). The most frustrating and impossible requirement is the framing of a complaint of the issues of this case and omit basic allegations of acts essential to maintain actions for conspiracy and outrageous conduct which were ordered dismissed and stricken. A child can see through it. The court placed impossible, inconsistent conditions upon the complaint required to insure closure of the courts to this petitioner.

K. MOTIONS BY PETITIONER TO COMPEL DISCOVERY WERE DENIED IN ABUSE OF DISCRETION

Defendants refused to answer any and all interrogatories, produce documents, and to appear for depositions. The appellant submitted appropriate motions to compel discovery. They were denied. (A-87). That

is in conflict with Rules 1, 26, 34, 36 and 37 F.R.C.P. and with this Supreme Court in Conley v. Gibson, 355 U.S. 41, 2 L.Ed.2d 80, 78 S.Ct. 99. Denied discovery included: (1) identification of real parties who were paying for litigation expenses of defendants, (2) documents published by Hartford to Brittain (paragraphs 40 and 45 of complaint), (3) documents published by Pryor ( paragraph 51 of complaint), (4) correspondence about the petitioner and his insurance including that referred to in paragraphs 64-68 of complaint and C.R.S. 12-43.5-102(3)(c), p. 16 supra, (5) minutes of meetings of the Risk Management Committee, (6) identification of persons attending aforementioned meetings, (7) information concerning other physicians whose patients' records have been illegally examined by the Risk Management Committee and/or Hartford, and (8) assets and income of

each defendant for punitive damages purposes.

No findings were made by the Court for denying the petitioner essentially all discovery. Sanctions threatened by the Court for failure to respond to future discovery were directed therefor only at the petitioner who had complied with all discovery requests. From related cases before the same court, the petitioner could plainly connect those threats with harassment under guise of discovery including numerous trips for days at a time to Colorado from Oregon and interrogatories requiring thousands of hours to answer repeating over and over information already known to defendants.

L. FEDERAL COURTS HAVE BEEN UNLAWFULLY CLOSED TO PETITIONER'S USE

The district court judge's orders must be considered in entirety to understand the purpose and impact. He ordered the petitioner to post a prohibitive bond in the amount of $48,000 after

determining that the petitioner was probably unemployed. He refused to strike motions to award attorney fees to defendants thereby maintaining a continuing threat of possible award of an exorbitant judgment against the plaintiff-petitioner by fiat, without benefit of trial, and without due process of law. He then secured the closure of courts by adding impossible, inconsistent conditions of an amended complaint which would exclude essential allegations. Even if the orders of cost bond and attorney fee threats are removed, the courts of the Tenth Circuit will still be closed to the petitioner and anyone else in the court's chosing by abuses of procedural rules. The matter cannot be considered piecemeal if there is to be justice through rule by law. Either there is a right to trial or there isn't. Unless this Court corrects the abuses presented, the First, Fifth, and Seventh Amendments are a

fraud except as to those selected few who are in power. Order of cost bond, threat of award of attorney fees and discovery expenses against the plaintiff-petitioner, and impossible procedural conditions need to be addressed in totality to correct arbitrary closure of the federal courts to the petitioner and others.

It is noted that the caption of the Court of Appeals distinguishes "defendants-appellees" and "defendants." Because there was no apparent reason for such, request for explanation by motion was submitted. The Appeals Court did not respond to the motion or otherwise explain its caption.

## RELIEF REQUESTED

The petitioner requests that this Court reverse the dismissal of the appeal of this case and consider the appeal in this Court. The petitioner requests that this Court issue order to the District Court to vacate its orders:

(1) dismissing the case, (2) that the petitioner post bond, (3) that allegations of paragraphs 40-53, 56-59, 63-68, and 103 of the complaint are dismissed, (4) that paragraphs 55, 60, and 75-79 of the complaint are stricken, (5) that the entire complaint is stricken, (6) that separate claims and counts against each defendant be alleged, (7) that more definite statement be submitted, (8) that time and place be alleged other than as already alleged, and (9) that an amended complaint is required; and issue order to the District Court to (1) grant all of the motions of the petitioner to compel discovery, (2) strike all motions to award defendants attorney fees, and (3) not require compliance with local Rule 5(g).

## CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted. Furthermore, the conspiracy subject of this

petition which obstructs justice to the public is continuing. If law is to be applied, correction through writ of certiorari is required. If application of the law through the courts remains unavailable to the petitioner and to the public, this government fails in a major purpose of its creation expressed in the Declaration of Independence. The historically repeated consequences are but a matter of timing.

Respectfully submitted,

Donald E. Tyler
Counsel for petitioner, pro se
1092 S.W. 2nd Avenue
Ontario, Oregon 97914
telephone (503)-889-5109

March 9, 1983

November Term - January 18, 1983

Before Honorable Oliver Seth, Honorable Monroe G. McKay, and Honorable James K. Logan, Circuit Judges

| | | |
|---|---|---|
| DONALD E. TYLER, | ) | |
| | ) | |
| Plaintiff-Appellant, | ) | |
| | ) | No. |
| vs. | ) | 82-1650 |
| | ) | |
| HARTFORD FIRE INSURANCE CO., | ) | |
| | ) | |
| WARREN & SOMMER, INC., | ) | |
| | ) | |
| WILLIAM BUCKMAN, PETER | ) | |
| | ) | |
| PRYOR, CHARLOTTE PELLETIER, | ) | |
| | ) | |
| JEAN KOEHLY, BERNADENE | ) | |
| | ) | |
| POST, GWEN STIEBER, ST. PAUL | ) | |
| | ) | |
| INSURANCE COMPANIES, | ) | |
| | ) | |
| BRIGHTON COMMUNITY HOSPITAL | ) | |
| | ) | |
| ASSOCIATION, | ) | |
| | ) | |
| Defendants-Appellees, | ) | |
| | ) | |
| COLORADO MEDICAL SOCIETY, | ) | |
| | ) | |
| INSTITUTE FOR CORRECTIVE | ) | |
| | ) | |
| PRACTICE, HERBERT | ) | |

ROTHENBER, M.D., WILFRED STEDMAN, M.D., JAMES A. HENDERSON, M.D., JOSEPH H. POYNTER, M.D., GALEN MARKS, M.D., ROBERT LARSEN, M.D., THOMAS H. MITCHELL, GRANT MILLER, M.D., RICHARD EVANS, TERRY FIELDS, JOHN MOTT,

Defendants.

This matter comes on for consideration of appellant's petition for rehearing filed in the captioned cause.

Upon consideration whereof, the petition for rehearing is denied.

HOWARD K. PHILLIPS,

clerk (signed)

NOT FOR ROUTINE PUBLICATION

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

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FILED
United States Court of Appeals

Tenth Circuit

DEC 16, 1982

HOWARD K. PHILLIPS

Clerk

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| DONALD E. TYLER, | ) | |
| | ) | |
| Plaintiff-Appellant, | ) | |
| | ) | |
| v. | ) | |
| | ) | No. |
| HARTFORD FIRE INSURANCE CO., | ) | |
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| WARREN & SOMMER, INC., | ) | |
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| | ) | |
| JEAN KOEHLY, BERNADENE | ) | |
| | ) | |
| POST, GWEN STIEBER, ST. PAUL | ) | |
| | ) | |
| INSURANCE COMPANIES, BRIGHTON | ) | |
| | ) | |
| COMMUNITY HOSPITAL ASSOC., | ) | |

Defendants-Appellees,

COLORADO MEDICAL SOCIETY, INSTITUTE FOR CORRECTIVE PRACTICE, HERBERT ROTHENBERG, M.D., WILFRED STEDMAN, M.D., JAMES A. HENDERSON, M.D., JOSEPH H. POYNTER, M.D., GALEN MARKS, M.D., ROBERT LARSEN, M.D., THOMAS H. MITCHELL, GRANT MILLER, M.D., RICHARD EVANS, TERRY FIELDS, JOHN MOTT,

Defendants.

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Appeal from the United States District Court for the District of Colorado

(D.C. No. 81-F-1287)

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Submitted on the briefs pursuant to Tenth Circuit Rule 9.

Donald E. Tyler, pro se

Donald E. La Mora, Colorado Springs, Colo., for Defendants-Appellees Warren & Sommer,

Inc. and Buckman.

Paul D. Cooper of Cooper & Kelly, P.C., Denver, Colorado, for Defendants-Appellees Pelletier, Koehly, Post, Stieber and Brighton Community Hospital Association.

Frank R. Kenndy of Cooper & Kelly, P.C., Denver, Colorado, for Defendant Mott.

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Before SETH, Chief Judge, McKAY and LOGAN, Circuit Judges.

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PER CURIAM.

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This three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); Tenth Circuit R. 10(e). The cause is therefore ordered submitted without oral argument.

This case is before the court on motions to affirm pursuant to Tenth Cir. R. 9 filed by the defendants. Plaintiff has filed a response

to the motions to affirm and "any and all similar motions which have been filed or may be filed."

The issue before this court is whether the district court properly dismissed the action with prejudice for failure to comply with orders of the court.

Plaintiff is a doctor who previously practiced medicine in Colorado and is now living in Oregon. Plaintiff is also a lawyer licensed in Colorado. On July 22, 1981, plaintiff filed a pro se complaint in federal court consisting of 120 paragraphs which filled twenty-two legal-sized pages (excluding the prayer) plus seventy-four additional pages of exhibits. The complaint named twenty-four defendants. Reference is made in the complaint to conspiracy, tortious conduct and illegal monopoly. It is dificult to discern with any degree of specificity the

precise claims which plaintiff sought to assert.

At the pretrial conference conducted on February 17, 1982, the district court advised plaintiff that he had engaged in an "extensive expenditure of time" in an attempt to understand the nature of the claims. (Vol. VI, p. 14) The district court observed that the "paragraphs (of the complaint) make repeated allegations of a long series of wrongful acts related to other lawsuits and illegal conduct." Id.

The court found it "impossible to determine what these acts are, who the claims are made against and precisely what the claims are." Id. As a result, the district court ordered the complaint stricken and granted the plaintiff until March 17, 1982 in which to file a "simple, concise and intelligible complaint." Id. The court went on to provide the plaintiff with

specific instructions regarding the manner in which the complaint was to be drafted.

The court further directed the plaintiff to furnish a cost bond in the amount of $2000 per defendant to be posted no later than March 15, 1982. Plaintiff was warned that the failure to furnish such a bond would result in dismissal of the case.

Thereafter, plaintiff filed a petition for writ of mandamus and/or prohibition and motion for stay of proceedings in this court. Plaintiff's petition, seeking that the district court's order of February 17, 1982 be vacated, was denied. Tyler v. United States District Court, No. 82-1296 (decision by order 10th Cir. filed March 19, 1982.) Plaintiff then petitioned the United States Supreme Court for a writ of certiorari. The petition was denied on October 4, 1982.

Plaintiff did not file an amended complaint in federal district court nor did he post a cost bond. Quite to the contrary, on April 12, 1982, plaintiff filed in the district court a document which stated that he had no intention of filing an amended complaint or posting a cost bond. At a hearing on April 21, 1982, the federal district court dismissed the action for plaintiff's failure to post a cost bond and file an amended complaint. After this hearing, plaintiff filed a document in which he once again refused to file an amended complaint or post a bond.

Fed. R. Civ. P. 41(b) provides for dismissal of an action for "failure of the plaintiff to prosecute or to comply with these rules or any order of court" (emphasis added). A dismissal under Rule 41(b) is committed to the sound discretion of the district court and we will review only for abuse of that discretion.

Link v. Wabash Railroad, 370 U.S. 626 (1962); Stanley v. Continental Oil Co., 536 F.2d 914 (10th Cir. 1976). To be sure, such a dismissal is a drastic sanction. It is to be applied only in extreme situations. Davis v. Operation Amigo, Inc., 378 F.2d 101 (10th Cir. 1967).

We have recently decided that where the district court failed to set forth factual findings and legal reasoning in its order of dismissal and where there was no evidence in the record of any intentional delay, contumaciousness or bad faith on the part of the plaintiff, it was an abuse of discretion to dismiss plaintiff's cause of action. Joplin v. Southwestern Bell Tel. Co., 671 F.2d 1274 (10th Cir. 1982). In the instant case, the district court's order of dismissal with prejudice sets forth a clear and detailed account of both the facts and law relied upon in reaching its conclusion. The plaintiff

revealed his manifest and willful refusal to comply with the court's order in two separate pleadings filed with the court. Plaintiff failed to appear at the hearing on April 21, 1982, on the defendant's motions for dismissal.

The district court's order to amend the complaint was a reasonable one. Fed. R. Civ. P. 8 provides that a complaint shall contain a "short and plain statement of the claim." Subsection (e) of Rule 8 calls for allegations that are "simple, concise and direct." A review of the complaint reveals that the numerous allegations are without any apparent organization; the allegations are verbose, conclusory and nebulous. There is no attempt to draw these loose assertions into unified and coherent legal claims. Rather, names, dates and facts are randomly tossed about like so much seed blindly cast wth the hope that somehow a legal claim would

germinate. The district court correctly concluded that such a complaint is in violation of the provisions of Fed. R. Civ. P. 8, and the court was well within its discretion in ordering that an amended complaint be filed.

We find no abuse of discretion in the district court's dismissal of plaintiff's action. The motions to affirm are hereby granted. The mandate shall issue forthwith.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

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|---|---|
| DONALD E. TYLER, | DATE: April 28, 1982 |
| Plaintiff | Action No.: 81-F-1287 |
| vs. | |
| HARTFORD FIRE INSURANCE COMPANY, et al., | MINUTE ORDER |
| Defendants | |

ORDER ENTERED BY JUDGE SHERMAN G. FINESILVER:

The Court is in receipt of plaintiff's Motion to Alter or Amend Judgment filed on April 29, 1982. In this motion, plaintiff claims that the Court erroneously dismissed this action because of plaintiff's refusal to submit a cost bond as ordered.

At a hearing conducted on February 17, 1982, the Court directed plaintiff to furnish

a cost bond in the amount of $2000 per defendant no later than the close of business on March 15, 1982. Plaintiff was repeatedly warned that failure to file such a bond would result in dismissal of the case. Nevertheless, plaintiff failed to furnish the bond and unequivocally indicated to the Court that he did not intend to furnish the bond. Section 13-16-102 of the Colorado Revised Statutes states, "If such plaintiff neglects or refuses, on or before the day ... named, to file such instrument (a cost bond), the court, on motion, shall dismiss the suit." On April 21, 1982, this Court conducted a hearing on defendants' motions for entry of judgment. Plaintiff elected not to appear at the hearing and filed a waiver which, once again, indicated that he had no intention of filing the ordered bond. In accordance with the

provisions of the statute, the Court granted the several motions of the defendants and dismissed the case. Such dismissal does not amount to error.

Accordingly, plaintiff's Motion to Alter or Amend Judgment is hereby DENIED.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 81-F-1287

| | |
|---|---|
| DONALD E. TYLER, | ) |
| | ) REPORTER's |
| Plaintiff, | ) |
| | ) TRANSCRIPT |
| v. | ) |
| | ) MOTIONS FOR |
| HARTFORD FIRE | ) |
| | ) JUDGMENT |
| INSURANCE CO., et al., | ) |
| | ) |
| Defendants. | ) |

Proceedings before the HONORABLE SHERMAN G. FINESILVER, Chief Judge, United States District Court for the District of Colorado, begininning at 2:00 o'clock p.m., on the 21st day of April, 1982, in Courtroom 201, United States Courthouse, Denver, Colorado.

APPEARANCES

ROBERT RUDDY, Attorney at Law, Johnson, Mahoney & Scott, 414 Hilton

Office Building, 1515 Cleveland Place, Denver, Colorado, appearing on behalf of Defendants Hartford Fire Insurance Company, Colorado Medical Society, Institute for Corrective Practice, Herbert Rothenberg, M.D., Wilfred Stedman, M.D., James A. Henderson, M.D., Joseph H. Poynter, M.D., Carl McLaughlin, M.D., Galen Marks, M.D., Robert Larsen, M.D., Thomas H. Mitchell and Grant Miller, M.D.

DONALD E. LaMORA, Attorney at Law, 430 North Tejon, Colorado Springs, Colorado, appearing on behalf of Defendants Warren & Sommer, Inc. and William Buckman.

ELLEN REATH, Attorney at Law, Sherman & Howard, 2900 First of Denver Plaza, 633 Seventeenth Street, Denver, Colorado, appearing on behalf of Defendant Peter Pryor.

STEPHEN D. DAWSON and PAUL D. COOPER Attorneys at Law, Cooper & Kelley, 1444 Wazee, #330, Denver, Colorado, appearing on behalf of Defendants Brighton Community Hospital, Charlotte Pelletier, Jean Koehly, Bernadene Post and Gwen Steiber.

PATRICK WILLIAMS, Attorney at Law, Gehler & Cohen, 6755 East 72nd Avenue, Commerce City, Colorado, appearing on behalf of Defendants Richard Evans and Terry Fields.

FRANK R. KENNEDY, Attorney at Law, 1444 Wazee, #330, Denver, Colorado, appearing on behalf of Defendant John Mott.

SUSAN SMITH FISHER, Attorney at Law, Hansen & Breit, Suite 960 Writer Square, 1512 Larimer Street, Denver, Colorado, appearing on behalf of Defendant St. Paul Insurance Companies.

PROCEEDINGS

THE COURT: May we take our case 81-F-1287, Donald Tyler vs. Hartford Fire Insurance, et al. Let me call the attorneys' names, if I may in the order in which I have them please.

Is Mr. Tyler here?

(Whereupon, there was no response.)

THE COURT: The record should reflect that no one responds to the name of Donald E. Tyler. The hour now is 2:05.

Robert Ruddy, please.

MR. RUDDY: Present, your Honor

THE COURT: You represent Defendants Hartford Fire Insurance Company, the Colorado Medical Society, Institute for Corrective Practice, Herbert Rothenberg, Wilfred Stedman, James A. Henderson, Joseph H. Poynter, Carl McLaughlin, Galen

Marks, Robert Larsen, Thomas Mitchell and Grant Miller, all doctors; is that correct, please?

MR. RUDDY: yes.

THE COURT: Mr. LaMora.

MR. LaMORA: Present, your Honor.

THE COURT: You represent Defendants Warren & Sommer and William Buckman.

MR. LaMORA: Yes, your Honor.

THE COURT: Ms. Reath, please.

MS. REATH: Ellen Reath on behalf of Defendant PeterPryor.

THE COURT: Thank you. Mr. Cooper, you and Mr. Dawson represent Brighton Community Hospital, Charlotte Pelletier, Jean Koehly, Bernadene Post and Gwen Steiber; is that correct, please?

MR. DAWSON: That's correct.

MR. COOPER: That's correct

THE COURT: Mr. Gehler, please.

MR. WILLIAMS: Patrick Williams of the office of Gehler & Cohen, your Honor.

THE COURT: You represent Defendants Richard Evans and Terry Fields; is that correct, please?

MR. WILLIAMS: Correct.

THE COURT: Thank you. Mr. Kennedy, you represent Defendant John Mott; is that correct, please?

MR. KENNEDY, Yes, your Honor.

THE COURT: Thank you. Mr. Breit?

MS. FISHER: Mr. Breit is not here, your Honor. I am Susan Smith Fisher from Hansen & Breit representing the St. Paul Insurance Companies.

THE COURT: Thank you. Have I omitted anyone? Have all Defendants been noted by the Court?

(Whereupon, there was no response.)

THE COURT: I would like to ask if any of the attorneys have had recent communications or correspondence with plaintiff Tyler in regard to the matters that's set forth this afternoon?

MR. COOPER: We received a waiver of appearance by Mr. Tyler.

THE COURT: Mr. Cooper, why don't you make a statement if you would, please, as to what you understand the posture of this case is at this time, please.

MR. COOPER: As I read his--I don't have a copy of it with me right now--I thought that it would be received by the Court. He basically indicates for a number of reasons why he does not appear today. States he refers to the $48,000 cost bond that was--

THE COURT: What date is that communication, please?

MR. COOPER: The certificate of mailing showed it was mailed to attorneys of record on April 15th, 1982, and he indicates in essence that he does not wish to comply with the Court order.

THE COURT: To my knowledge we have never received this communication. [1]

MR. COOPER: Oh. It indicates that he does not wish to attend this hearing. Does not wish to comply with the earlier Court orders about amending the complaint and filing a cost bond, and recites the history of the proceedings in the Tenth Circuit and says while he does not want to appear or

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1. (This footnote is added). The document referred to is printed in this Appendix A, starting on page A-45. It was mailed by certified mail, and the return acknowledgment of receipt indicates that it was received by the clerk's office on April 19, 1982, two days before this hearing.

or waives his right to appear at the hearing today, in paragraph 18 he indicates that he wants a verbatim transcript of the record to be made of this hearing, and that he does not waive his right to seek review of any orders entered here by appropriate courts or other proceedings.

THE COURT: Counsel, I suggest that you--since we have not received this, will you have your copy marked as an exhibit, please. We will have it photostated and see that you get it back, do you understand?

MR. COOPER: This is Ms. Reath's copy, but I will.

THE COURT: Let's refer to this as combined Defendants' Exhibit A, please.

MR. COOPER: I will tender same to the Court.

THE COURT: Have all defense counsel received a copy of this waiver of hearing?

MR. WILLIAMS: Yes, your Honor.

MR. LaMORA: Yes, your Honor.

THE COURT: Based on this hearing, Mr. Cooper, what is your request, please?

MR. COOPER: We would request that the matter be dismissed with prejudice as to all defendants for failure to comply with the earlier order of the Court.

THE COURT: With prejudice?

MR. COOPER: And for the underlying reasons made in those motions.

THE COURT: With prejudice or without prejudice?

MR. COOPER: With prejudice.

THE COURT: Who else would care to address themselves to this matter, please? Identify yourself for the record also, please.

MS. REATH: Ellen Reath on behalf of Defendant Peter Pryor. In the Court's earlier ruling, I believe the allegations

against Mr. Pryor were dismissed. They were not necessarily subject to being amended or refiled. They were dismissed because the allegations concerned slander and libel and are barred by the Colorado Statute of Limitations, so therefore it's our position those were--if they were not already dismissed should be dismissed today with prejudice. Even if Mr. Tyler were to refile his complaint he would not be able to correct the defects in those allegations.

MR. KENNEDY: Your Honor, Frank Kennedy on behalf of Defendant Mr. John Mott. Mr. Mott's position is much the same as Mr. Pryor's in that the only specific allegations against him appear to be directed to two issues, and that was conspiring to put on false testimony in a state court action, which I believe we have cited in our brief the

Tenth Circuit has stated is not actionable, and the second one is libel and slander which the Court did dismiss the libel and slander allegations which the Court did dismiss at the prior hearing. (sic)

So our position would be much the same as Mr. Pryor's in that we believe all of the claims against Mr. Mott have already been dismissed, and would not be subject to correction, even if Dr. Tyler would file an amended complaint.

Mr. Mott would also like it to be clear that his motion to dismiss the complaint with prejudice would be for two reasons, and that would be Dr. Tyler's failure to post the cost bond which certainly in Mr. Mott's opinion more than justified based on the type of complaint that was filed, 24 separate defendants, and also Dr. Tyler's history of

other actions which this Court is certainly aware of because they have been assigned to this Court, 80-F-1305, 80-F-1285, 81-F-1290 and 79-F-864, but in addition to the cost bond, we would also like moving for dismissal because Dr. Tyler has failed to even file an amended complaint which the Court gave him an opportunity to try to restate his claim in a more succinct way as to state his causes of action.

THE COURT: Anyone else care to address themselves to this matter, please?

(Whereupon, there was no response.)

THE COURT: Again, is Donald E. Tyler here, please?

(Whereupon, there was no response.)

THE COURT: The record should reflect that no one responds to the Court's call.

The nature of the case is as follows: That

Plaintiff Donald E. Tyler has filed suit against 24 individual and corporate defendants on several charges which appear to stem from the cancellation of Dr. Tyler's malpractice insurance and circumstances surrounding his termination from the Brighton Community Hospital. The complaint seeks compensatory and punitive damages in excess of $15,000,000 on numerous antitrust, civil rights, contract, tort and conspiracy claims.

The Court conducted a pretrial conference in this case on February 17th, 1982. At that time the Court granted Defendants' motions for cost bond, and ordered Plaintiff to furnish such bond in the amount of $2000 per defendant by the close of business on March 15th, 1982.

The Court similarly granted Defendants' motion to strike the complaint and ordered the Plaintiff to file an amended complaint on

or before the 17th of March, 1982.

Our review of the record this date, and the Court files reflect that the Plaintiff has not filed either an amended complaint or a cost bond. His attempts to stay proceedings while taking appeals to the Tenth Circuit Court of Appeals, United States Supreme Court, have been denied.

Defendants have moved for entry of judgment based on Plaintiff's failure to comply with the Court order, and Plaintiff has indicated that he does not intend to file either a cost bond or an amended complaint.

We are referring to Plaintiff's response to motions to enter judgment filed April 12th, 1982. By minute order dated March 26th, 1982, this matter was set down for hearing this afternoon. The following motions are pending: Motion for entry of judgment filed by

Hartford Fire Insurance and others on March 18th, motion for entry of judgment filed by Defendant Warren & Sommer, Inc. and William Buckman on March 22nd, motion for entry of judgment filed by Defendant Peter Pryor on March 23rd, joinder in motion for entry of judgment filed by Defendant St. Paul Fire Insurance Co. on March 24th, 1982, motion for entry of judgment and attorney's fees filed March 26th by Defendant Richard Evans and Terry Fields, joinder and motion for entry of judgment filed by Defendants Brighton Community Hospital Association, Charlotte Pelletier, Jean Koehly, Bernadene Post and Gwen Steiber, April 2nd, 1982.

Also these motions appear in the file: Plaintiff's motion to strike the motions for attorney's fees filed on April 12th, 1982, and Plaintiff's motion to strike the affidavits by Patrick Williams and Chris Melonakis filed

April 12th, 1982. We also have in hand--

MR. KENNEDY: Your Honor, may I?

THE COURT: Please.

MR. KENNEDY: On April 2nd, 1982, in addition to Brighton Community Hospital, Defendant John Mott also filed a similar motion.

THE COURT: The record will so reflect. I appreciate you bringing it to the Court's attention. The Court has in hand an instrument designated "Waiver of Hearing" which was dated April 15th, 1982, and signed Donald E. Tyler, attorney for Plaintiff pro se, 1092 S.W. 2nd, Ontario, Oregon 97914, and a telephone number. The Waiver of Hearing is generally as outlined by Mr. Cooper. It is in 21 paragraphs, and in effect reflects that, to wit: Paragraph 10, "The hearing scheduled April 21st, 1982, is noticed

to act on defendants' motions to dismiss because of failure of the plaintiff to submit the aforementioned bond."

Paragraph 11, "The plaintiff does not intend to submit the aforementioned bond."

Paragraph 12, "The plaintiff relied upon the 1st, 5th and 7th Amendments of the U.S. Constitution and had no reason to believe that this Court could condition use of the United States District Court in this case upon the posting of a bond in the amount of $48,000."

Paragraph 13, "The hearing scheduled April 21, 1982, is also noticed to act upon motions for attorney's fees by defendants Evans and Fields."

14, "Plaintiff has submitted reasons why those motions should not be granted, and the motions and memoranda of the plaintiff directed to that issue are incorporated herein by this reference."

Paragraph 15, "The plaintiff believes that similarto the proceeding on February 17, 1982, that issues subject of the hearing scheduled April 21st, 1982, have been pre-decided."

Paragraph 16, "The plaintiff has submitted responses to motions of defendants which are incorporated herein by this reference."

Paragraph 17, "The plaintiff believes that a trip to Colorado to attend the hearing scheduled April 21, 1982, will unnecessarily jeopardize his health and unnecessarily cost him considerable time and money."

Paragraph 18, "Therefore, the plaintiff waives his right to appear at the hearing on April 21st, 1982."

Paragraph 19, "The plaintiff does not waive right of hearing on matters not noticed to be subject of hearing April 21st, 1982."

Paragraph 20, "The plaintiff does not waive right to seek review in and by appropriate courts and other proceedings"

Paragraph 21, "Plaintiff requests that the entire hearing and entire proceedings on April 21st, 198., be recorded in entirety and verbatim."

Is Donald E. Tyler here? It is 2:20 and no one responds to the Court's call. The Court has admitted the exhibit in as being "Waiver of Hearing." The concern of the Court is whether we dismiss the case with or without prejudice.

Does anyone else care to make any additional statements in regard to Mr. Cooper, Mr. Mott and Mr. Pryor? Anything further in this regard, please? Please.

MR. WILLIAMS: Patrick Williams appearing on behalf of Defendants Fields and

Evans. I don't know whether the Court wants to take up our request for attorney's fees.

THE COURT: Counsel, while you are on your feet, why don't you address yourself to that matter?

MR. WILLIAMS: Okay. If it please the Court, on the request for attorney's fees, we have filed an affidavit by myself and also verified to by another attorney who has reviewed my files and the work that I have done. In Dr. Tyler's responses as the Plaintiff to this action, the main thrust is that this Court is without jurisdiction to award attorney's fees pursuant to a state statute. I would cite to the Court the case of Morton v. Allied Stores Corporation, 90 FRD 352, a 1981 decision from the District Court, United States District Court for the District of Colorado. It was Judge Chilson. And that specific issue was brought before the Court

and the Court did rule that that specific statute is applicable to an action which is in the federal court.

THE COURT: I agree with that, counsel.

MR. WILLIAMS: Okay. In this case, your Honor, there was discovery with reference to the allegations that Dr. Tyler made against these two specific defendants. Depositions were taken by Dr. Tyler of both of these defendants. He propounded a first set of interrogatories to all defendants which we did reply to. We submitted a first set of interrogatories to him which he submitted some answers to. The only other interrogatories which were submitted were again to all defendants, and then a stay order was entered so there was significant discovery. In that discovery your Honor-- and I have referred to it in my brief-- the thrust of Dr. Tyler's complaint is that

on July 1st of 1977, these two individuals were acting as police officers in the City of Brighton. A call was made into the dispatcher, and these two officers responded to the Platte Valley Medical Clinic where they received information from a third party regarding some activity of Dr. Tyler. The third party information these two defendants in this action that Dr. Tyler had just lost a civil lawsuit in state court, and the third party indicated that the third party had heard that Dr. Tyler was seen carrying a gun, and they were concerned about his enemies. With respect to Officer Evans, all he did was collect that information, make a report and file it in the Brighton Police Department. He had no other connection with Dr. Tyler at all. Defendant Terry Fields from that point then went with another officer who was Lieutenant

Ward now with the Brighton Police Department. They went over to Dr. Tyler's apartment that evening to talk to him about this situation. Dr. Tyler alleged in his complaint that Defendant Fields was overbearing, agitated, annoying, things of that nature. The deposition of Defendant Fields contradicts that, and says no, we merely went there to discuss the situation with Dr. Tyler to inform him that we had received this report, and to hopefully-- that would be an end to it. No charges were ever filed against Dr. Tyler, nothing was ever done as a follow-up after that discussion was held. In my interrogatories to Dr. Tyler with respect to both of these defendants, I asked for all specifics, all facts that he had which would support his claims against these two individuals, and all

I received back was conclusions that they had to be acting in conspiracy with all these other people, that they violated his rights, et cetera. But when I asked for language, acts, what they did, I received no information from Dr. Tyler supporting his claim against these two officers. I think clearly with respect to Defendant Evans who was the officer who m[illegible]ely took a report from a third party and filed his report in the Brighton Police Department, the action against him has no grounds in law or fact. He never had any contact with the Plaintiff. He never did anything as a follow-up. With respect to Defendant Fields, the only additional work that he did was go to the home of Dr. Tyler, the residence. There is no indication of forced entry, there is no indication of any physical assault. Again I asked for

language that annoyed, harassed, intimidated Dr. Tyler. There was no response in the interrogatories as to any specific language. So I would state that the facts as opposed to the conclusions made by Dr. Tyler clearly indicate that all these two officers did was act in the line of their duty, respond to a call and make a police report which is clearly within the ambit of their duties as law enforcement officers, and that there was no basis in fact or law to bring the action against these two officers. If Dr. Tyler may have had a complaint for conspiracy against these various medical personnel, it may be that Defendants Fields and Evans could have been witnesses. That would be their only connection with this case at all. [1]

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1. There was no notice that motion for summary judgment by these defendants was set for hearing on this date. Discovery and facts are misrepresented.

THE COURT: Thank you very much. Please. Mr. LaMo ra.

MR. LaMORA: May it please the Court, Donald E. LaMora on behalf of the Defendants Warren & Sommer and Buckman.

Addressing the Court's concern over whether the dismissal should be with or without prejudice, under the rules generally the dismissals are with prejudice unless there is some reason shown that there be reason without prejudice. In the instant case I would further submit that Dr. Tyler has had the benefit of dismissal without prejudice up to this point in time, and that the Defendants are entitled to a dismissal with prejudice so that this matter can proceed to appellate review, if that's what Dr. Tyler's choice is. On behalf of our defendants, we filed a number of motions when the case was

originally presented. However, we did elect to participate in discovery, and responded to discovery, and we have spent a very substantial amount of time and money in the discovery in this case, and in preparation and filing of motions and down through our motion for summary judgment. When the Court afforded Dr. Tyler the opportunity to file an amended complaint, in fact directed him to file an amended complaint, it's our opinion that he was given all the benefits that he is entitled to of dismissal without prejudice. He has specifically in two documents filed with the Court rejected the opportunity to file an amended complaint, and I think it must follow as a matter of course that this dismissal should be with prejudice so the matter can proceed to a final determination to

which the Defendants are entitled.

THE COURT: Anyone else care to address the Court, please? I think the Court is prepared to rule. The Court will deny the motion for attorney's fees, counsel. Without prejudice to reinstituting such request at a later juncture should that become necessary. However, at this time the reaction of the Court tends to take, the Court will deny the motion for attorney's fees. The Court will grant Defendants' several motions for entry of judgment, and the case as to each of the Defendants is dismissed with prejudice. The Court clearly explained to the Plaintiff at the February 17th, 1982 Pretrial conference that the pleadings in this matter were seriously deficient, taken in their individuality or collectively. And pursuant to CRS 1973, Section 13-16-102, the Court

directed Plaintiff to furnish a cost bond in the amount of $2000 per Defendant no later than the close of business on March 15th, 1982. The Court did instruct the Plaintiff at that time that pursuant to the provisions of the statute, failure to furnish the cost bond would potentially result in the dismissal of this case. The Court also has afforded the Plaintiff the opportunity of filing an amended complaint to delineate the respective charges with specificity as to each of the several defendants. This has not been done. The amended complaint has not been filed. And the plaintiff has failed to furnish the bond, and has unequivocally indicated to this Court that he does not intend to furnish the bond.

Further, we are concerned over the fact that at this hearing, even though each of the respective Defendants are represented by

counsel at an expense to each of the Defendants, the Plaintiff, through document designated "Waiver of Hearing" has elected not to be present at this hearing on the several motions going to whether this case should remain viable.

In the "Waiver of Hearing" the Plaintiff has unequivocally stated that he does not intend to file a bond, and he does not intend to appear at the hearing.

We are satisfied that every fair courtesy has been extended to the Plaintiff in an effort to assist him in the protection of his legal rights. However, the absence of the Plaintiff at this time indicates a question in the Court's mind as to whether the Plaintiff does sincerely intend to proceed with the litigation. We are satisfied that the information/warnings given to the Plaintiff as to what could occur should he not file

a bond or proceed with the other orders entered by the Court has resulted in inaction by the Plaintiff in regard to amended complaint or the cost bond.

The file on this case, and the record should so reflect, is extremely voluminous. Each of the respective defendants have had to retain counsel. They have attended several court hearings, filed responses and briefs. Discovery has gone forward in this case. Attorneys' fees have been incurred by each of the Defendants, and now it appears at a time when the matter can be put into proper focus, the Plaintiff elects not to be present.

The Plaintiff elects not to file an amended complaint. The plaintiff elects not to put up a cost bond, and unequivocally states he will not. Thus, we feel there are strong and substantial reasons why Defendants' motions

for entry of judgment should be granted, and why this case as to each Defendant should be dismissed with prejudice. The Court has dismissed without prejudice, however, the attorneys's fees for Defendants Evans and Fields, even though there are rather persuasive reasons why attorney's fees should be granted. However, in the exercise of this Court's discretion, in lieu of the fact that the Court is dismissing the case with prejudice, the Court will move in that direction and not award any attorney's fees. Mr. Cooper, may the Court impose on you, please, to prepare a very brief written order reflecting the action that the Court took, please, with chronology of dates and also with appropriate references to Defendants' Combined Exhibit A which has been admitted in evidence, the Waiver of

Hearing. I will ask you, please, to merely mail this to other defense counsel in the case, and within a given number of days if they do not respond , the matter should be sent to the Court. I will not ask all defense counsel to approve it, but they should have the opportunity. Would you assume that responsibility, please?

MR. COOPER: That would be agreeable, your Honor.

THE COURT: May this be accomplished within ten days, please?

MR. COOPER: Yes, it may.

THE COURT: Again, is Donald E. Tyler here? (Whereupon there was no response.)

THE COURT: The hour is twenty-five minutes of 3:00. The record should reflect that no one responds to the Court's call.

The Court will ask that this be filed with the Court within ten days. Anything

further to be brought before the Court, please? Court will be in recess. Thank you very much. This concludes the hearing.

(Whereupon, this hearing was then concluded at the hour of 2:35 o'clock p. m. this date.)

REPORTER'S CERTIFICATE

I, Suzanne M. Claar, Certified Shorthand Reporter and Official Reporter to this Court, do hereby certify that I was present at and reported in shorthand the proceedings in the foregoing matter; that thereafter my shorthand notes were reduced to typewritten form under my supervision, comprising the foregoing official transcript; further, that the foregoing official transcript is a full and accurate record of the proceedings in this matter on the date set forth.

Dated at Denver, Colorado, this 22nd day of April, 1982.

(signed) Suzanne M. Claar, RPR

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action 81-F-1287

| | | |
|---|---|---|
| DONALD E. TYLER, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | WAIVER OF |
| vs. | ) | |
| | ) | HEARING |
| HARTFORD FIRE INSURANCE | ) | |
| | ) | |
| COMPANY, et al., | ) | |
| | ) | |
| Defendants | ) | |

COMES NOW the plaintiff and waives his right to hearing on April 21, 1982, for matters noticed subject of that hearing. Plaintiff submits:

1. The plaintiff sustained multiple compression fractures of his spine and other injuries on July 17, 1981, from which he has not recovered.

2. The trip to Colorado for proceedings in this Court on February 17, 1982, caused increased pain, discomfort, and injury and

damage to his health, and unnecessarily cost him several hundred dollars.

3. The plaintiff has had no earned income since 1977 as a result of the wrongful acts of defendants.

4. The plaintiff has expended more than $55,000.00 and an extremely large amount of time in attempting to obtain justice and benefit of rule of law through use of courts in matters related to this lawsuit.

5. The plaintiff for health and financial reasons must make no unnecessary trips to Colorado.

6. On February 17, 1982, this Court ordered the plaintiff to submit a bond in the amount of $48,000.00 for purposes of defendants by March 15, 1982, or this case would be dismissed.

7. The plaintiff has not been notified of any

change in that order.

8. This Court and the Tenth Circuit Court of Appeals have refused to stay proceedings for time for the plaintiff to seek review of that order by the U.S. Supreme Court.

9. This Court has refused the plaintiff time to receive and review memoranda of defendants prior to the hearing scheduled.

10. The hearing scheduled April 21, 1982, is noticed to act on defendants' motions to dismiss because of failure of the plaintiff to submit the aforementioned bond.

11. The plaintiff does not intend to submit the aforemen tioned bond.

12. The plaintiff relied upon the 1st, 5th, and 7th Amendments of the U.S. Constitution and had no reason to believe that this Court could condition use of the United States District Court in this case upon the posting of a bond in the amount of $48,000.00.

13. The hearing scheduled April 21, 1982, is also noticed to act upon motions for attorneys fees by defendants Evans and Fields.

14. Plaintiff has submitted reasons why those motions should not be granted, and the motions and memoranda of the plaintiff directed to that issue are incorporated herein by this reference.

15. The plaintiff believes, and with good reason, that similar to the proceeding on February 17, 1982, that issues subject of the hearing scheduled April 21, 1982, have been pre-decided.

16. The plaintiff has submitted responses to motions of defendants which are incorporated herein by this reference.

17. The plaintiff believes that a trip to Colorado to attend the hearing scheduled April 21, 1982, will unnecessarily jeopardize

his health and unnecessarily cost him considerable time and money.

18. Therefore, the plaintiff waives his right to appear at the hearing on April 21, 1982.

19. The plaintiff does not waive right of hearing on matters not noticed to be subject of hearing April 21, 1982.

20. The plaintiff does not waive right to seek review in and by appropriate courts and other proceedings.

21. Plaintiff requests that the entire hearing and the entire proceedings on April 21, 1982, be recorded in entirety and verbatim.

DATED April 15, 1982 (filed 4/19/82)

By (signed) D.E. Tyler

Donald E. Tyler
Attorney for plaintiff, pro se
1092 S.W. 2nd Ave
Ontario, Oregon 97914
telephone (503)-889-5109

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 81-F-1287

| | |
|---|---|
| DONALD E. TYLER, | ) |
| | ) RESPONSE |
| Plaintiff, | ) |
| | ) TO MOTIONS |
| vs. | ) |
| | ) TO ENTER |
| HARTFORD FIRE INSURANCE | ) |
| | ) JUDGMENT |
| COMPANY, et al., | ) |
| | ) |
| Defendants | ) |

COMES NOW the plaintiff in compliance with the order of this Court issued March 26, 1982, and submits the following:

1. Defendants have submitted motions to enter judgment in their favor based upon: (a) the plaintiff has not submitted a cost bond in the amount of $48,000.00; and (b) the plaintiff has not amended his complaint.

2. The plaintiff intends to do neither.

3. The order of a cost bond in the amount of $48,000.00 was presented as following

C.R.S., 1973, 13-16-102.

4. There is no precedent in either the State of Colorado or the United States to require such a cost bond of a plaintiff to present a grievance and complaint of common law and federal statute transgression resulting in personal damage for resolution in their courts.

5. It is submitted that C.R.S., 1973, 13-16-101, 13-16-102, and 13-17-101 as applied in this case deprive the plaintiff without due process of law property and other valuable rights including but not limited to his right to seek justice in the courts of the United States without threats and intimidation guaranteed by the preamble, Art. III, sec. 2, Art. IV, sec. 2, the 1st, 5th, 7th and 14th Amendments of the U.S. Constitution, and of the Declaration of Independence as a

condition imposed upon the Statehood of Colorado in its Enabling Act to which the United States is bound.

6. It is submitted that the requirement of a $48,000.00 cost bond is contrary to the essential principles of the Declaration of Independence for which this nation was founded and the basic principles for which the people have fought and died.

7. The plaintiff has been and is continuing to be denied his fundamental basic rights of U.S. citizenship.

8. Such unprecedented closure of the federal courts infers that there is an extreme degree of bias and prejudice against the plaintiff.

9. Prejudice to the intensity manifested against the plaintiff causes the plaintiff to reasonably conclude that the closure of the

federal courts to him is due to his minority religious affiliation.

10. The plaintiff's petition for writs of mandamus and/or prohibition, Tyler v. the U.S. Dist. Ct., No. 82-1296, U.S. Ct. of Appeals, 10th Circuit, is appended hereto as EXHIBIT A (except for its exhibits A through P which are already a part of this record) and incorporated herein.

11. The plaintiff sees no point in attempting to amend the complaint since he does not intend to post a cost bond.

12. The plaintiff therefore stands on his complaint, and submits that such is his right according to the Seventh Amendment of the U.S. Constitution, the common law, and the Declaration of Independence.

By (signed) D.E. Tyler

...

(mailed April 6, 1982, filed April 12, 1982)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 81-F-1287

| | | |
|---|---|---|
| DONALD E. TYLER, | ) | |
| | ) | |
| Plaintiff, | ) | REPORTER'S |
| | ) | |
| v. | ) | TRANSCRIPT |
| | ) | |
| HARTFORD FIRE INS. | ) | PRETRIAL |
| | ) | |
| CO., et al., | ) | CONFERENCE |
| | ) | |
| Defendants | ) | |

Proceedings before the HONORABLE SHERMAN G. FINESILVER, U.S. District Judge, United States District Court for the District of Colorado, begining at 1:30 o'clock p.m., on the 17th of February, 1982, in Courtroom 201, United States Courthouse Denver, Colorado.

APPEARANCES

...

## PROCEEDINGS

THE COURT: May we proceed in our case Number 81-F-1287, Donald E. Tyler v. Hartford Fire Insurance Company, please. May we proceed, please. Dr. Tyler, you are the Plaintiff; is that correct, please?

MR. TYLER: Yes, sir.

THE COURT: Let me call the names as I have them on my list. Let me know if you are here, and if I have your representation correct, please.

THE COURT: Mr. Roger F. Johnson and Robert Ruddy. You represent Hartford Fire Insurance Company, Colorado Medical Society, Institute for Corrective Practice, Herbert Rothenberg, M.D., Wilfred Stedman, M.D., James A Henderson, M.D. Joseph H. Poynter, M.D., Carl McLauthlin, M.D., Galen Marks, M.D., Robert Larsen, M.D., Thomas H. Mitchell, Grant Miller,

M. D.; is that correct?

MR. RUDDY: That's correct.

THE COURT: The record will so reflect. Mr. LaMora?

MR. LaMORA: Yes, your Honor.

THE COURT: You represent Defendants Warren & Sommer, Inc. and William Buckman; is that correct?

MR. La MORA: That's correct, your Honor.

THE COURT: Mr. Williams?

MR. WILLIAMS: Yes, your Honor.

THE COURT: Well, we have another Mr. Williams. Let me take them in my order first.

MR. WILLIAMS: Fine.

THE COURT: Mike Williams, Ken Siegel and Ellen Reath representing Defendant Peter Pryor; is that correct?

MR. WILLIAMS: That is correct. I am present, Mike Williams and Ellen Reath.

THE COURT: Steve Dawson and Paul Cooper representing Defendants Brighton Community Hospital, Charlotte Pelletier, Jean Koehly, Bernadene Post and Gwen Steiber; is that correct, please?

MR. COOPER: That's correct.

THE COURT: Robert Gehler, please?

MR. WILLIAMS: I am with Mr. Gehler's office, Patrick Williams, your Honor.

THE COURT : At the conclusion of the hearing, counsel, would you give Mrs. English your full name or your card, please.

MR. WILLIAMS: All right.

THE COURT: You represent Defendants Richard Evans and Terry Fields; is that correct, please?

MR. WILLIAMS: Yes.

THE COURT: Mr. Kennedy, you represent Defendant John Mott; is that correct, please?

MR. KENNEDY: That's correct.

THE COURT: And John Breit, please, you represent Defendant St. Paul Insurance Company?

MR. BREIT: That's correct, and with me is Susan Fisher of our office.

THE COURT: You might have her added with Mrs. English. Have I omitted anyone, ladies and gentlemen, please? In regard to counsel's name or in regard to any of the Defendants in this Case?

This matter is set for pretrial conference, and the Court has literally spent days, if not weeks, analyzing the complaint in this case and the pleadings, filings, and to say the least, the file is

extremely voluminous. The Court has it on the bench. And we are actually in the third large expanded file on this case. We are going to try to set up a blueprint to bring this case under what we consider to be judicial management, but with an attitude that the case will go forward according to the guidelines the Court sets rather than helter-skelter way without any direction. I will ask counsel to make notes. I don't intend to repeat anything. I am in the middle of a trial. We are in the seventh day of a trial. We have people from out of state, and this case has attracted the Court's attention; so likewise must this other case involving personal injuries attract the Court's attention.

Plaintiff Tyler has filed suit against 24 individual and corporate defendants on a

myriad of charges which appear to stem from the cancellation of Dr. Tyler's malpractice insurance and the circumstances surrounding his termination from Brighton Community Hospital. The complaint is lengthy. It is verbose. And at times Doctor, it's confusing. I can't track in every particular parts of that complaint.

The complaint seeks conpensatory and punitive damages in excess of 15 million dollars on theories ranging from antitrust, civil rights, contract, tort and conspiracy claims.

There are numerous pending motions in this case. For the sake of convenience, and for the Court to track what's involved in this case, it's almost like--to somewhat give semblance of order, the Court has taken the various complaints and drawn a chain of title as was existent prior to title

insurance to find out exactly what was involved in this lawsuit. And also putting piles of the complaint which were duplicated, and we added the responses to parts of the complaint. So in effect we had seven or eight different piles in regard to what was being charged and who the litigants were.

I am grouping the motions along these five directions: Number 1, the motions to stay; second, motions addressing the sufficiency of the complaint; three, the discovery motions; four, the motions for cost bond; five, motions for summary judgment. The motions for stay filed by Defendants Hartford Insurance Company, et al. on October 8, 1981, also a motion to stay filed by Defendants Warren & Sommers and William Buckman on October 19th, 1981.

We recognize the proposition that a

federal court can defer federal proceedings until the completion of a similar state court action to avoid waste and duplication. This general rule rests within the discretion of the Court. I will give you the name of the case, Will v. Calvert Fire Insurance Company, a United States Supreme Court case, 436 U.S. 655. We are advised that there are several lawsuits pending in the state court. We are not taking judicial notice of those cases. We don't know the full details. Therefore references or oblique references to those other cases, we have not studied those other cases. We understand those cases are progressing at certain levels of rapidity or slowness in the respective state courts. We are of the view that staying this proceeding will not assist in its efficient and economical resolution. It will only result in additional delay. The claims in this action, to the

extent they can be determined, primarily involve issues of federal law as we view it. We will not exercise pendent jurisdiction in this case, and because primarily those issues touch upon federal law, it's appropriate that we try to resolve it in federal court. Now it's the Court's experience when we stayed matters pending resolution in the state court, the case slips between the cracks and we lose track of it, and attorneys change, judges change, the parties change, the associations change, and it does not serve a purpose to resurrect cases that have been stayed. So this Court is of the view that we are not going to stay the case. Defendants' motion to stay these proceedings are hereby denied.

Secondly, motions addressing the sufficiency of the complaint, motions to dismiss for failure to state a claim were

filed by Defendants Warren & Sommers and Buckman on August 31; by Defendant Mott on August 31; filed by Defendant Brighton Community Hospital on August 31; by St. Paul Insurance on September 1st; by Defendant Hartford Insurance Co. on September 1st; by Defendants Pelletier, Koehly, Post and Stieber on September 1st; filed by Defendants Evans and Fields on October 9th. We are well aware of the standard to be used in evaluating the legal sufficiency of a complaint. We have reviewed again Rule 12(b)(6) of the Federal Rules of Civil Procedure, and the Court, accordingly, must construe the complaint in a light most favorable to the Plaintiff and accept the allegations as true. Wright and Miller, Civil Section 1357. It must appear to a certainty that Plaintiff is is entitled to no relief under any state of facts

which could be proven in support of the claim. Gas-A-Car v. American Petrofina, 484 F. 2d 1102, a Tenth Circuit case. The Court has spent a great deal of time reviewing Dr. Tyler's virtually unintelligible complaint in accordance with these standards.

Defendants' motions to dismiss for failure to state a claim are granted in part and denied in part as follows: Paragraphs 40-53, 56-59 and 63-68 are dismissed.

MR. TYLER: Would you mind repeating those again?

THE COURT: Yes, again, please. Paragraphs 40-53, 56-59, and that is inclusive, 63-68 are dismissed.

These paragraphs apparently allege claims for slander and libel based on various publications, republications and ratification of publications that occurred in

1976 and 1977 and are barred by the Colorado one year statute of limitations, C.R.S. 1973, Section 13-80-102. There is no merit to Dr. Tyler's argument that the statute of limitations is not applicable because the libel and slander were means and acts committed pursuant to a conspiracy. We have considered that argument. We reject it. The complaint addressed the tort of conspiracy, not criminal conspiracy, but the tort of conspiracy is poorly defined. It is well established that tortious conspiracy is not actionable per se, but, instead, depends upon proof of an underlying cause of action. Perhaps the leading case still on that point is Morrison v. Goodspeed. To the extent that libel and slander form the basis for Dr. Tyler's tortious conspiracy claims, these allegations are dismissed. It's clear from the face of the complaint that the

statute of limitations bars all claims for libel based on publications occurring in 1976 or '77. Under these circumstances, the dismissal of these paragraphs is proper, Murphy v. Dyer, a case from this district on the district court level.

Similarly, Paragraph 103, alleging that various Defendants reduced hospital privileges of two physicians not parties to this lawsuit, is dismissed. Plaintiff has no standing to make claims on behalf of these individuals.

The motions to dismiss for failure to state a claim are denied in all other repsects without prejudice to being refiled at a later date.

The Court directs the following caveat to you, Dr. Tyler, however: The Court has serious questions regarding the sufficiency of many of the claims in this complaint, and

is sorely tempted to dismiss Defendants Pryor, Mott, Pelletier, Koehly, Post and Stieber, among others. We are not doing that at this time, but you must know what the study and the research analysis of this Court dictates.

The Court is particularly concerned about the sufficiency of the following claims: violations of 42 United States Code, Section 1983; Plaintiff has failed to allege facts which indicate that Defendants acted under color of law and failed to specifically allege the violation of any of his constitutional rights; violations of 42 United States Code, Sections 1985 or 1986 action. Griffin v. Breckenridge, a United States Supreme Court case.

It's the Court's recollection that no one cited the case of Ward v. St. Anthony's

Hospital to the Court, a Tenth Circuit case. That case is from this District. From this Court to the Tenth Circuit. It is somewhat informative on some of the analysis of the Court. Ward v. St. Anthony's Hospital.

Violations of 15 United States Code, Section 15, Section 4 of the Clayton Anti-Trust Act. The Court is concerned about the operation of the McCarren Ferguson Act, Section 1012, with respect to these claims. Even McCarren Ferguson does not bar these counts, however, Dr. Tyler must properly plead damage to his trade or business in accordance with the language of the statute, and this must be done with some specificity. Not a marble on the floor approach where many marbles are thrown on the floor hoping they are just going to fall into a pocket that suggests a theory of recovery.

The Court is not going to search and stretch and strain to see what those theories are. They have to be articulated in a way that is discernible. Unless these deficiencies are corrected, the Court will not hesitate to dismiss these claims also.

Motions to strike are filed by Defendants Warren & Sommers, William Buckman on August 31st; by Defendant Mott on August 31st, 1981; by Defendant Brighton Community Hospital on August 31st, 1981; by Defendant St. Paul Insurance Company on September 1st, 1981; by Defendant Hartford Fire Insurance on September 1st, 1981. The Defendants' motions to strike certain paragraphs of the complaint as redundant, immaterial, impertinent and insufficient pursuant to Rule 12(f) of the Federal Rules of Civil Procedure are granted in part and

denied in part as follows: Paragraph 55 referring to alleged libel by an unknnwn person is stricken; Paragraph 60 referring to letters sent by Plaintiff to Defendants which were not answered is stricken; Paragraph 75-79 referring to the circumstances surrounding the death of one William Waddell are stricken.

All other particulars subject to my later remarks, Defendants' respective motions to strike are denied.

The Court informs the Plaintiff again the Court is tempted, when an amended complaint is filed, if it is filed, to strike allegations which are impertinent, immaterial and argumentative. We will, however, give you the benefit of the doubt. In redrafting the amended complaint, Dr. Tyler, the Court cautions you that it will not be so

lenient the next time around. You are remaining in the Court on these claims on a shoestring. On legal sufficiency. As a licensed attorney, you are well aware of the requisites of proper pleading. If they are redundant and immaterial and insufficient allegations appearing in subsequent pleadings, the Court on its own motion will strike the same.

Now, the posturing the complaint created a situation of requiring the Court in an inordinate way of analyzing virtually every word because of the broad-based attack on the sufficiency and articulation or lack of articulation in the complaint. That is not necessary, should not be warranted or tolerated by a licensed attorney.

Item C. Motion to strike the complaint, the Defendants' motion to separately state claims, motions for more definite

statement and motions to dismiss for failure to aver time and place. They are filed by Defendants Warren & Sommers, William Buckman on August 31st, by Defendant Mott on that same date, St. Paul Insurance Company September 1st, 1981, by Defendant Hartford Fire Insurance on September 1st. We have tried to understand the nature of the claims in this lawsuit in an extensive expenditure of time. The 100 page complaint against 24 defendants is complex, at times it's unintelligible. The paragraphs make repeated allegations of a long series of wrongful acts related to other lawsuits and illegal conduct. In full sincerity, it is impossible to determine what these acts are, who the claims are made against and precisely what the claims are. As a result, the Defendants' motions to strike

the complaint, motions to separately state claims and motions for a more definite statement are granted. Defendants' motions to dismiss for failure to aver time and place are denied.

Dr. Tyler, as a plaintiff, the Court directs you to seriously evaluate your posture as a plaintiff in this case and your claims in view of what the Court has mentioned today. You will have until the close of business on Wednesday, March 17th in which to file a simple, concise and intelligible complaint which corrects the numerous deficiencies mentioned by the Court today, if you so choose. We strongly encourage you to retain an attorney to review the matter with you and discuss the matter with this other attorney. In drafting the new complaint, keep in mind the

directives of Rule 8 of the Federal Rules of Civil Procedure that the complaint contain a short and plain statement of the claims showing that the pleader is entitled to relief and that each averment be simple, concise and direct. The complaint should not contain indiscernible references to unidentified parties, unnamed defendants, unrelated lawsuits which do not establish a claim for relief and have no nexus whatsoever in regard to this lawsuit. In addition, the Court directs the Plaintiff to exclude statements which have no legal basis or significance and to refrain from including any disparaging remarks about defendants or their counsel. The Court further directs that the amended complaint, if one is filed, shall separately number and state each claim against each defendant in accordance

with Rule 10(b). Specifically, you must set forth the time, place and manner of Defendants' acts which allegedly interfered with your practice of medicine and obstructed your access to the courts. You must also fully set forth the basis for any claims of breach of fiduciary duty or breach of contract. The allegations must be sufficient for Defendants to frame a responsive pleading.

We remind all counsel that, Plaintiff and counsel for all Defendants in this case, of the provisions of Rule 11 of the Federal Rules of Civil Procedure, which is frequently overlooked or ignored, but with increased interest is receiving considerable vitality not only by district judges, but by circuit judges, and one case the Supreme Court. I would suggest that all counsel here read Rule 11, and also the very stringent provisions

that are under consideration and discussion by the Advisory Committee headed by Professor Arthur Miller as its chief counsel. That rule provides that the signature of an attorney on a pleading indicates that he or she has read the pleading and to the best of his or her knowledge, information and belief there is ground to support it. All attorneys present are held to that standard and the sanctions that may be imposed. However, Dr. Tyler, you are not pro se and not unfamiliar with these rules. You are going to be held to the same standard as every other attorney who practices before the Court, notwithstanding you are pro se. I say this most kindly, most sincerely. That you must not permit your personal or emotional involvement in this case to obscure your judgment as an attorney or strike back by means of a complaint drawn

in the fashion that this complaint is drawn .

Again I say I do not know you. I have had other cases that I have dismissed that have been filed in this Court at your request with other counsel. [1] I know some of the Attorneys in this case. [2] I know few of the doctors involved. [3] I have little connection with the Brighton Community Hospital. [4] You could say I am starting on square one. And I am suggesting most sincerely that you speak to an attorney who is detached from the elements of this case; from what you perceive to be the injustice and determine if this is a justiciable type of case.

The Court intends to proceed with this

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1. Two related cases against counsel for Brighton Community Hospital and others were recently settled by that counsel in favor of the plaintiff.
2. The Court addressed some familiarly by nick-names on pages A-62 and A-63. That is not without effect.
3. The relationship has not been further identified.
4. This is the only information of a connection.

case on an expeditious basis from this point on out. The amended complaint, if the Plaintiff chooses to file one, is due by the close of business on March 17th. The Defendants are directed to file unequivocal answers without prejudice to their right to file any motions attacking the sufficiency of the complaint or Rule 12 motions by the close of business on March 31st of 1982. In effect, the Court intends to keep this case in the posture of being at issue.[5] Again, I am directing that unequivocal answers be filed without prejudice to Rule 12 or other motions. These unequivocal answers should be filed by the close of business on the 31st of March. The Court will direct likewise

5. The only defendants who have filed answers are Fields and Evans. (Petitioner's note)

that motions, Rule 12 or other motions, shall be filed by that date also. The Court will allow counsel, however, should Rule 12 motions be filed, until the 9th of April in which to file briefs attacking the sufficiency of the complaint, if any, that are articulated on March 31st deadline. Dr. Tyler, a responsive brief shall be filed by April 21st, 1982 to any of these pretrial motions.

A status conference is set for Wednesday, May 12th, 1982 at 1:30, and the Court will endeavor to set up an agenda what we will go through at that time.

The Court very well will rule on the motions without oral argument. However, the Court will try and endeavor to give this case as much attention as we possibly can, commensurate with other cases. But the Court of necessity cannot continue to give

an inordinate amount of time to this case to the detriment of other cases that are of equal importance, and perhaps have a higher priority because they involve employment discrimination under federal statute, civil liberties or the various ramifications of the Speedy Trial Act.

All pending discovery motions are denied. After the amended complaint and answers have been filed, the case will be referred to a magistrate for all discovery proceedings, with the caveat that this should not impede the progress and with a request of the magistrate to seek to expedite the discovery disputes. However, after the substantive motions are filed, Rule 12 or other motions, thereafter this Court or the magistrate will not consider any discovery or any other disputes of scheduling or

otherwise unless and until there is a Rule 5(g) certificate filed, or its equivalent, in all matters. 5(g) is part of out local rules. If counsel are not familiar with it, I suggest that you may speak to the clerk at the counter downstairs, and obtain a copy of our local rules. That applies not only to discovery matters, but other matters also dealing with timetables and so forth. The Court does not perceive that judicial intervention is necessary at every stage of this case.

The Rules of Civil Procedure and the spirit and tenor of Rule 1 of the Federal Rules of Civil Procedure outline the philosophy of minimizing the cost of expense, encouraging cooperation without judicial intervention. This case has extracted considerable judicial intervention from the time it was filed to this time. That is to be expected. But it will not be encouraged

in the future, and I daresay it's not going to be tolerated, so counsel are going to have to conduct this in an orderly professional way, all counsel, please.

Discovery in this case is to be completed by May 28th. I will ask counsel to cooperate in that regard, and I did not say that that commences discovery. Should the Court find any abuse of discovery dealing with depositions or interrogatories, requests for admissions, requests for authenticity, the Court will impose sanctions. Counsel are well aware of sanctions that could be imposed under Rule 37, and also that are articulated in the case of State of Ohio v. Crofters that emanated from this Court, 75 Federal Rules Decision 12, and also 570 F. 2d 1370.

The fourth item that I would care to address myself to is motions for cost bond. Motions for cost bond have been filed by

defendants Hartford Insurance Company and others on September 1st, by Defendant Warren & Sommers and William Buckman, September 11th, by Defendant Brighton Community Hospital on September 18th, by Defendant Mott October 2nd, by Defendant St. Paul Insurance Companies on October 9th.

The Court has wide discretion to require the Plaintiff to post a security for costs. Federal courts generally follow the forum of state practices. I generally follow what the tradition is or somewhat what the blueprint is under the state statute according to 1973 C.R.S. 13-16-102, it is the duty of court to provide a cost bond if the plaintiff is a non-resident, and the Court is satisfied that he or she may not be able to pay the cost of the suit. In this case Dr. Tyler is a resident of Oregon, and there are threads throughout the various pleadings in

this case as to whether Dr. Tyler is gainfully employed. The complex nature of this suit, the numerous filings, the exigent circumstances with discovery, [6] Plaintiff's demand for excessive damages [7] make a cost bond both necessary and appropriate.

Plaintiff is directed to furnish a cost bond in this action in the amount of $2,000.00 per defendant. Such bond shall be posted no later than the close of business on March 15th 1982. Failure to furnish a bond with the clerk of the court at that time will result in dismissal of the case. Again March 15th.

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6. On page A-87, the Court denied virtually all discovery of most defendants by the plaintiff.

7. The Court does not reveal what demand he will allow without a cost bond. He is obviously biased since he has no evidence upon which to base an opinion of the amount of damage other than the sworn to complaint. He should have appropriately disqualified himself prior to issuing this order.

Item IV, motion for summary judgment filed by Defendants Warren & Sommer and Buckman on January 19, 1982, by Defendant Evans on February 4th, 1982, by Defendant Field on February 4, 1982, these several motions for summary judgment are summarily denied without prejudice to refile at a later date.

This concludes the hearing. The Court will be in recess for five minutes.

(Whereupon, this hearing was then concluded at the hour of 2:10 o'clock p.m.

REPORTER'S CERTIFICATE

... the foregoing official transcript is a full and accurate record of the proceedings in this matter on the date set forth.

Dated at Denver, Colorado, this 18th day of February, 1982.

(signed) Suzanne M. Claar, (RPR)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action 81-F-1287

DONALD E. TYLER,

Plaintiff,

vs.

HARTFORD FIRE INSURANCE COMPANY, COLORADO MEDICAL SOCIETY, WARREN & SOMMER, INC., INSTITUTE FOR CORRECTIVE PRACTICE, HERBERT ROTHENBERG, M.D., WILFRED STEDMAN, M.D., JAMES A. HENDERSON, M.D., JOSEPH H. POYNTER, M.D., CARL McLAUTHLIN, M.D., GALEN MARKS, M.D., ROBERT LARSEN, M.D., WILLIAM BUCKMAN, THOMAS H. MITCHELL, PETER PRYOR, CHARLOTTE PELLETIER, JEAN KOEHLY, BERNADENE POST, GWEN STIEBER, GRANT MILLER, M.D., RICHARD

COMPLAINT

EVANS, TERRY FIELDS, JOHN MOTT, ST. PAUL INSURANCE COMPANIES, AND BRIGHTON COMMUNITY HOSPITAL ASSOCIATION,

Defendants.

The plaintiff complains of the defendants and each of them, jointly and severally, and for cause of action alleges:

JURISDICTION

1. Jurisdiction is based upon diversity of citizenship and the amount in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars. The plaintiff is a citizen of the State of Oregon and the defendants are all citizens of other states; all individuals named as defendants are citizens of Colorado, and none of the defendant corporations or associations are incorporated in or have their principal offices in the State of Oregon. Jurisdiction is also based upon

federal issues of significance including but not limited to Title 15 of the United States Code and Title 42 §§ 1983, 1985, 1986, 1988, 1992, and Ch. 13, § 241 U.S.C.S.

FIRST CLAIM FOR RELIEF:

COMMON LAW REMEDY FOR UNLAWFUL AND WRONGFUL INTENTIONAL INTERFERENCE WITH BUSINESS BY INDIVIDUALS AND PURSUANT TO CONSPIRACY

2. At all pertinent times defendants Terry Fields and Richard Evans and Larry Clay were officers in the Police Department of Brighton, Colorado, and were acting under color of that office and laws of the State of Colorado.

3. At all times pertinent defendants Hartford Fire Insurance Company, Colorado Medical Society (hereinafter referred to as CMS), Institute for Corrective Practice, Herbert Rothenberg, M.D., Wilfred Stedman, M.D.,

James A. Henderson, M.D., Joseph H. Poynter, M.D., and Carl McLauthlin, M.D., were acting under open and declared color of Statutes of the State of Colorado including C.R.S., 1973, amended, 10-4-109, 13-21-110, 13-90-107, 12-43.5-101, and 12-43.5-102.

4. At times pertinent herein defendant Brighton Community Hospital Association (hereinafter referred to as BCHA) operated Brighton Community Hospital (hereinafter referred to as BCH).

5. At times pertinent herein Francis Fry was an employee and agent of defendant Hartford Fire Insurance Company (hereinafter referred to as Hartford).

6. At times pertinent herein Francis Fry was acting within the scope of his employment and agency for defendant Hartford.

7. All acts alleged herein committed by Francis Fry have been approved of and ratified by defendant Hartford.

8. At all times mentioned herein defendant Hartford was acting as the agent for defendants Marks and Larsen and for their benefit.

9. At times mentioned herein Robert Brittain was acting as an employee and agent of defendant Institute for Corrective Practice (hereinafter referred to as ICP) and was acting within the scope of that employment.

10. All acts of Robert Brittain herein alleged have been for the benefit of defendant ICP and have been approved and ratified by ICP.

11. At times mentioned herein Robert Brittain was employed by defendant CMS and was acting within the scope of that employment.

12. At times mentioned herein defendant ICP was employed by defendant CMS and was acting within the scope of that employment.

13. All acts alleged herein as committed by Robert Brittain and by ICP were done pursuant to employment by defendant CMS as agents for CMS and all such acts have been approved of and ratified by CMS.

14. At all times mentioned herein and pertinent defendant Thomas H. Mitchell was acting as an employee and agent for defendant Hartford and was acting within the scope of that employment and agency.

15. All acts herein alleged committed by defendant Mitchell have been approved of and ratified by defendant Hartford.

16. At all times mentioned herein defendant William Buckman was acting as an employee and agent for defendant Warren & Sommer, Inc., and was acting within the scope of that employment and agency.

17. All acts herein alleged committed by defendant Buckman have been approved of and

ratified by defendant Warren & Sommer, Inc..

18. At all times mentioned herein defendant Peter Pryor was acting as an agent for Hartford.

19. All acts herein alleged committed by defendant Peter Pryor were within the scope of his agency for Hartford and were approved and ratified by Hartford.

20. At all times mentioned herein Robert Brittain and defendants Herbert Rothenberg, M.D., Wilfred Stedman, M.D., James A. Henderson, M.D., Joseph H. Poynter, M.D., and Carl McLauthlin, M.D., were acting as agents of defendant CMS and were acting within the scope of that agency.

21. All acts herein alleged committed by Robert Brittain, and by defendants Rothenberg, Stedman, Henderson, Poynter, and McLauthlin were approved and ratified by defendant CMS.

22. At all times mentioned herein defendant Warren & Sommer, Inc., was an agent for defendant Hartford and was acting within the scope of that agency.

23. All acts herein alleged committed by Warren & Sommer, Inc., were approved and ratified by defendant Hartford.

24. At all times mentioned herein until January 1, 1981, the plaintiff was licensed by the State of Colorado to practice medicine and surgery therein.

25. At all times mentioned herein until December 10, 1977, the plaintiff practiced medicine and surgery in Brighton, Colorado.

26. The defendants and each of them, jointly and severally, have committed and continue to commit numerous acts including but not limited to those noticed herein to intentionally unlawfully interfere with and obstruct the lawful practice of medicine and surgery of the

plaintiff and pursuant to conspiracy with each other and with other persons known and unknown to the plaintiff.

27. The numerous acts by the defendants, jointly together and by each of them, including but not limited to those herein noticed have been outrageous and have been and continue to be committed by the defendants and each of them pursuant to conspiracy to intentionally cause the plaintiff worries, anxieties, and severe emotional distress and to thereby and in other ways including but not limited to those herein described to intentionally wrongfully interfere with and obstruct the plaintiff's access to and use of courts and his prosecution of lawsuits for damages and designed to restore his medical practice, and to retaliate for the plaintiff's rightfully properly seeking relief and redress in courts to restore his medical practice and

ability to practice medicine, and to thereby and in other ways wrongfully interfere with his practice of medicine and surgery free from such wrongful and unlawful interference.

28. At all times mentioned herein a contract and agreement was in effect between Hartford and defendant CMS to the effect that physicians who were or who are members of CMS can be insured for professional liability by Hartford with premiums subject to substantial decreases by refunds depending upon Colorado claims.

29. Copy of aforementioned agreement between Hartford and CMS is appended hereto as EXHIBIT A.

30. In June, 1975, and in September, 1975, and at other times the plaintiff initiated lawsuits against Galen Marks, M.D., Robert Larsen, M.D., William Waddell, M.D., Bernadene Post, Jean Koehly, Gwen Stieber, BCHA, and

others alleging various illegal acts pursuant to conspiracy.

31. Complaint of one of aforementioned lawsuits (Civil Action 28036) is incorporated and appended hereto as EXHIBIT B(omitting its exhibits A and B).

32. At all times mentioned herein, an insurance agreement was in effect between St. Paul Insurance Companies, the insurer, and BCHA in an amount of $1,000,000.00 for liability subject to aforementioned lawsuits and subject to acts of defendants Gwen Stieber, Bernadene Post, Jean Koehly, BCHA, Marks, Larsen and others; and St. Paul Insurance Company insured David Grayson subject to claims by Tyler in Civil Action 29014, Dist. Ct. for Adams County.

33. Each and every defendant herein at the time of acts he, she, or it committed as alleged herein had knowledge of the

aforementioned lawsuits, the complaints and the acts therein alleged.

34. Each and every defendant herein at the time of acts alleged committed by each of them jointly, noticed herein, knew that the facts alleged in the aforementioned complaints were as alleged.

35. Each and every defendant herein has approved and continues to approve in outrageous conduct the conspiracies and acts as alleged of defendants in aforementioned complaints, including libels, slanders, false statements, falsification of documents, deliberately falsified hospital records, aiding and abetting illegal practice of medicine by unlicensed persons, coercion of the plaintiff to accept patients in situations in which it would be improper practice of medicine for him to do such, scheduling of professional disciplinary action hearings of the plaintiff

without charges and without notice of specific charges prior to scheduled times of hearings, deceit and fraud, reduction of various physicians' privileges to practice medicine in a public community hospital without due process of law and in breach of hospital by laws, conspiracy to damage and resulting damage to the plaintiff's practice of medicine, and other outrageous conduct and gross breaches in the established ethics of the medical profession.

36. At all times mentioned herein defendant Hartford insured defendants Marks and Larsen, subject to aforementioned CMS-Hartford contract (Exhibit A), each with policy limits in the amount of one million dollars ($1,000,000.00) and such insurance was and is subject to claims by the plaintiff in aforementioned lawsuits in which Marks and Larsen are defendants.

37. At all times mentioned herein until December 11, 1977, the plaintiff was a member of CMS and was insured by Hartford subject of aforementioned CMS-Hartford contract.

38. At all times mentioned herein defendants Hartford, CMS, Warren & Sommer, ICP, Buckman, Mitchell, Rothenberg, Stedman, Henderson, McLauthlin, Miler, Poynter, Marks, Larsen, and all members of CMS had and continue to have substantial financial interests in aforementioned contract between Hartford and CMS and in the aforementioned lawsuits in which Larsen and Marks are defendants, and the defendants herein aforementioned have acted and continue to act unlawfully and against the plaintiff as herein alleged for those and other wrongful financial reasons and for their own financial benefit, and against public interests,

in breach of fiduciary duties and in breach of contract of rules governing CMS by Constitution, by-laws, or by other name.

39. Acts committed by the defendants herein alleged as individuals and pursuant to aforementioned conspiracy include but are not limited to those cited in the following paragraphs.

40. On or about June 15, 1976, in offices of defendant Hartford at 800 Grant St., Denver, Colorado, Francis Fry, acting for Hartford, published to Robert Brittain, M.D., who was employed by CMS, the entire files of Hartford dealing with all cases in which the plaintiff herein was plaintiff including but not limited to those aforementioned and included the complaint which is appended hereto as EXHIBIT B .

41. Aforementioned publications by Fry and Hartford included many written documents

which were false and defamatory and in other ways damaging to the plaintiff and in his practice of medicine including the false documents appended as exhibits in EXHIBIT B.

42. None of the aforementioned documents had been introduced in trial at times mentioned and pertinent herein, and there was no privilege to republish them by the defendants herein, and they invaded the privacy of the plaintiff by such republications and in other ways.

43. The publications aforementioned were not to express an opinion of the contents of the documents, but the publications were for wrongful purposes of conspiracy as herein alleged.

44. Aforementioned publications included medical records of patients cared for by the plaintiff without such persons' consent, which were unlawfully in the possession of Hartford which along with nurse's comments concerning

patients were supplied to it in conspiracy by BCHA and for its benefit and for the benefit of its insurer, St. Paul Insurance Companies, and ratified by BCHA and St. Paul Insurance Companies, in breach of medical ethics, hospital rules and regulations, and in breach of contracts between patients and physicians on the medical staff of BCH including the plaintiff and between him and BCH, and such ratification included all publications and republications herein alleged and pursuant to conspiracy.

45. Aforementioned publications included evaluations of the lawsuits by attorneys for Marks and Larsen including John Mott, and Zarlengo, Mott, and Zarlengo, and revealed to the defendants herein that the attorneys knew and revealed therein that there was no legitimate defense for Marks and Larsen, that they would depend upon creating

prejudices, and that the illegal help of the defendants herein was needed.

46. Aforementioned publications by Hartford to Brittain and by Brittain to other persons as alleged herein was established practice, and was approved beforehand by defendant John Mott and Zarlengo, Mott, and Zarlengo, and were for their benefit, and they ratified such publications and all the unlawful acts resulting from and associated with those publications.

47. Aforementioned documents revealed to the defendants herein that the defendants in the aforementioned lawsuits, including Marks and Larsen and attorneys Mott, and Zarlengo, Mott, and Zarlengo, knew of the falseness of the documents published by Hartford to Brittain and by Brittain to other persons as herein alleged.

48. Aforementioned documents published by defendants herein have been refused the

plaintiff for examination, and plaintiff requests permission to amend the complaint and add parties as necessary for complete justice after aforementioned documents are examined by the plaintiff.

49. On or about July, 1976, and at other times known to the defendants, in Brighton Community Hospital, Brighton, Colorado, and at the office of Robert Brittain, 3501 S. Corona, Englewood, Colorado, and at other times and places known to the defendants, defendants Marks and Larsen approved and ratified publications aforementioned to Brittain by Hartford and by Brittain to others and all acts herein alleged which were all done in their behalf and for their benefit.

50. In September and November, 1976, and at other times known to the defendants, and at places known to them, Brittain orally republished the contents of the aforementioned

false documents to defendants Stedman, Rothenberg, and Henderson who with Brittain were members of the Risk Management Committee of the CMS.

51. In April, 1977, defendant Peter Pryor, acting for Hartford, republished documents aforementioned including but not limited to a document, copy of which is appended hereto as EXHIBIT C, in writing to defendants Stedman, Rothenberg, and Henderson by mailing them and other documents damaging to the plaintiff from his office at 801 E. 17th Avenue, Denver, Colorado, addressed to aforementioned defendants at places known to them.

52. Aforementioned document, Exhibit C, is libelous on its face of the plaintiff and is false and is damaging to the plaintiff concerning his profession.

53. Aforementioned document concerns a private matter, not of public interest.

54. Aforementioned publications by defendant Pryor and Hartford were not to express an opinion of the false, libelous contents of aforementioned documents, and the purpose of such republication was without color of legitimacy and was for purposes of the conspiracy alleged herein, and to obstruct and interfere with the lawful taking of depositions of the defendants Stedman, Rothenberg, and Henderson by the plaintiff in discovery proceedings in aforementioned lawsuits, and to reinforce the publications by Brittain aforementioned and to maintain a continuing process of insult and damage to the plaintiff and in his pracitce of medicine.

55. Aforementioned document, Exhibit C, was illegally in the possession of Pryor, due to libel by some person whose identity is

undetermined.

56. Aforementioned publications in writing and orally by Fry for Hartford, Brittain for CMS, and Pryor for Hartford were false and on their face stated that the plaintiff acted and spoke unprofessionally in conduct of his practice of medicine and surgery and those publications were so interpreted by persons to whom they were published as herein alleged and which persons heard and read them.

57. The aforementioned publications are false, and Hartford, Brittain, and Pryor knew of their falseness and published them in reckless disregard of whether they were true or false.

58. Aforementioned publications by Hartford and Brittain implied and insinuated that the plaintiff had been accused of substandard conduct in his practice of medicine, that he had been properly notified of a hearing

concerning his practice of medicine, and that he improperly refused to attend such hearing, and they were read and heard and so interpreted by the persons to whom they were published as herein alleged; and these and other implications, insinuations, and direct statements in aforementioned documents and publications damaging to the plaintiff in his profession were false and Fry, Hartford, and Brittain knew that they were all false at the times they republished them and they published them in reckless disregard of whether they were true or false.

59. As a proximate result of the foregoing, and providing pretext, and pursuant to conspiracy, defendants Hartford, CMS, Warren & Sommer, ICP, Rothenberg, Stedman, Henderson, McLauthlin, Buckman, Mitchell, Poynter, and others did cause oppressive, abusive, insulting, threatening, false,

deceitful letters to be written and mailed to the plaintiff, at times and places as indicated thereon or known by defendants and received by the plaintiff at 1790 E. Bridge St., Brighton, Colorado, copies of which are incorporated herein and appended hereto as EXHIBITS D, E, F, G, H, I, J.

60. Letters and by copies, copy appended hereto as EXHIBIT K, were mailed certified by the plaintiff on September 12, 1977, from 1790 E. Bridge St., Brighton, Colorado, to persons stated thereon, were received by each of them September 13, and 14, 1977, with return acknolwdgements of receipt, and were unanswered by anyone.

61. The Risk Management Committee of the CMS had no expertise or jurisdiction to determine the quality of the records of patients of the plaintiff as to their legal value to the plaintiff herein and to his insurer

Hartford and against the interest of the patients in the hypothetical event the plaintiff herein were sued for malpractice, the deceitful reason claimed by defendants they sought permission to examine such records referred to in aforementioned letters, Exhibits D through J.

62. Aforementioned letters, Exhibits D through J, are false and deceitful in various ways in that defendants sought permission to examine records of patients cared for by the plaintiff not for the purposes stated in those letters and in their explanatory statements, nor limited to the stated purpose of examining emergency room records, nor limited to examination by the Risk Management Committee; and the defendants sought permission to examine those records for the the wrongful purposes of conspiracy as herein alleged.

63. As a proximate result of the foregoing, and pursuant to conspiracy, defendants Stedman, Rothenberg and Henderson and Brittain acting as the Risk Management Committee of the CMS on or about March 21, 1977, at a place known to the defendants but unknown to the plaintiff, acted without jurisdiction, without notice of hearing, and without hearing, and decided and determined and caused recommendation be made to various entities and persons that the professional liability insurance of the plaintiff not be renewed.

64. Aforementioned recommendation was published by the persons aforementioned in paragraph 63 in writing to defendants Hartford and Warren & Sommer, Inc., on or about March 21, 1977.

65. Aforementioned recommendation was false in that it stated or implied and in

writing that the plaintiff practiced medicine and surgery in such a manner as to make him an increased risk to be successfully sued for malpractice.

66. Aforementioned recommendation was false in that it stated or implied that the plaintiff had not cooperated with the lawful purposes of the committee.

67. Aforementioned publication by the Risk Management Committee has not been examined by the plaintiff and its exact contents are unknown to him in spite of all due diligence on his part and because of the surreptitious, cablistic nature of the conspiracy and the protection from discovery afforded such conspiracy by the color of law under which it operated and operates. Plaintiff requests permission to incorporate such document herein and together with any innuendo as required or necessary, after such document

is examined pursuant to discovery proceedings.

68. Aforementioned document is libelous on its face and by innuendo of the plaintiff and damaging to his professional practice of medicine, and such publication caused and causes special, monetary damage to the plaintiff as a proximate result as hereinafter alleged more fully.

69. The Risk Management Committee did not determine that the plaintiff was an insurance risk greater than average, but made the aforementioned recommendation under pretext of finding that the plaintiff improperly did not cooperate with the committee, and they made such finding and recommendation without charges, notice of hearing, or hearing.

70. As a proximate result of the foregoing, and pursuant to conspiracy herein alleged, oppressive, coercive, unethical conditions precedent were added to any renewal of

plaintiff's professional liability insurance by Hartford to include permission for Hartford to examine medical records of patients cared for by the plaintiff, picked by them at random.

71. As a proximate result of the foregoing wrongful acts, aforementioned insurance of the plaintiff was not renewed and expired on or about December 11, 1977, and other damages resulted as hereinafter alleged.

72. The foregoing acts were for the benefit of defendant St. Paul Insurance Companies which approved and ratified them.

73. In the fall of 1975, and particularly during the first week of January, 1976, the plaintiff was actively noticing to take depositions and was taking depositions of person associated with Brighton Community Hospital including defendants in lawsuits aforementioned in which defendants Marks, Larsen, and William Waddell, M.D., were defendants and

alleged to be co-conspirators.

74. Aforementioned allegations were well-founded in fact; on March 6, 1980, a jury returned findings and verdict to the effect that Marks, Larsen, and others had conspired and damaged the plaintiff, subject to order for new trial as to amount of damages. EXHIBITS L, M.

75. Prior to March, 1977, it was reported to the plaintiff that on January 12, 1976, William Waddell, M.D., was found dead in his garage, the doors of the garage were found closed, the motor of the vehicle was running, the vehicle was backed into the garage, his body was near the rear of the vehicle, and no injuries were found. Examination of his blood was reported to reveal carbon monoxide at a level capable of having caused his death.

76. Aforementioned reports reasonably caused the plaintiff to believe and continue to believe that William Waddell died as a result

of carbon monoxide poisoning caused by suicide due to his complicity in aforementioned conspiracy and to escape consequences, and that reports to the contrary were pursuant to conspiracy to suppress those truths and evidence.

77. At all times pertinent mentioned herein, defendants Marks, Larsen, Charlotte Pelletier, Bernadene Post, Jean Koehly, and Gwen Stieber had knowledge of aforementioned details of Waddell's death and the plaintiff's reasonable belief that the cause was suicide because of guilt and to avoid consequences of lawsuits.

78. The plaintiff grieved that William Waddell died and particularly in such terribly painful circumstances to himself and to his family.

79. At all times mentioned herein, defendants aforementioned in paragraph 77 knew that the plaintiff was and is sensitive of feelings of

other persons and that the plaintiff and Waddell had had a good working and social relationship prior to Waddell's involvement in conspiracy with Marks and Larsen.

80. At all times mentioned herein all defendants herein knew that the plaintiff was being subjected to severe stress and was and is very susceptible to suffer emotional distress as a result of outrageous conduct designed to cause him emotional distress as herein alleged.

81. In 1976, 1977, and 1978, and at other times, for discovery and trial of the aforementioned lawsuits, the plaintff caused to be served subpoenae and his personal checks for witness and mileage fees upon many persons including but not limited to defendants Marks, Larsen, Pelletier, Post, Koehly, and Stieber.

82. At various times from and including

March, 1977, through April, 1978, defendants Marks, Larsen, Pelletier, Post, Koehly, and Stieber endorsed aforementioned personal checks of the plaintiff and presented them for payment in Brighton, Colorado, with directions written thereon indicating that the payment of such checks was to be for a memorial fund for aforementioned William Waddell.

83. Defendants aforementioned in paragraph 81, and each of them, at all times herein pertinent knew that the aforementioned checks, after such endorsement and presentation for payment, would be reutrned to the plaintiff, and they were accordingly returned to the plaintiff who read the endorsements thereon as the checks were returned in 1977 and 1978 in Brighton, Colorado.

84. Aforementioned acts by defendants Marks, Larsen, Pelletier, Post, Koehly, and Stieber were outrageous and done intentionally to

cause the plaintiff to suffer severe emotional distress related to Waddell's death, and by adding to, reinforcing, reaffirming, and flaunting their wrongful acts alleged in EXHIBIT B, and they proximately caused damage as hereinafter alleged.

85. On the evening of July 1, 1977, in the District Court in and for Adams County, State of Colorado, a jury returned a verdict in favor of the defendants in Tyler v. Gaylor, et al., and consolidated Tyler v. Gaylor's Food Store, Inc., et al., which cases were related to aforementioned lawsuit against Marks, Larsen, and others, complaint EXHIBIT B.

86. Immediately following return of aforementioned verdict, on the same evening, a party was in progress in the Platte Valley Clinic Building, 1929 E. Egbert St., Brighton, Colorado, attended by persons associated with BCH and the Platte Valley Clinic including

defendants herein.

87. Prior to July 1, 1977, and in BCH, Grant Miller, M.D., conspired with defendants herein and again and continuing on July 1, 1977, at 1929 E. Egbert St., Brighton, Colorado, he continued to so conspire and acted pursuant to conspiracies as alleged in paragraphs 26 and 27.

88. On July 1, 1977, at 1929 E. Egbert St., Brighton, Colorado, defendant Miller,pursuant to conspiracies aforementioned conspired with other defendants aforementioned and with other persons including but not limited to Richard Evans, Larry Clay, and Terry Fields to utilize their positions as police officers to harass, annoy, terrorize, abuse, humiliate, insult, and intimidate the plaintiff that evening and at his place of residence, and to intentionally cause him severe emotional distress.

89. As a proximate result of the foregoing, and pursuant to conspiracies aforementioned Officer Terry Fields, in police uniform and bearing a gun, came to the apartment of the plaintiff at 90 South 18th Avenue, Brighton, Colorado, in which he and his 84 year-old mother were present, and demanded to interrogate the plaintiff.

90. Aforementioned defendant Fields was agitated, over-bearing, oppressive,insulting, demanding, and abusive to the plaintiff and in the presence of the mother of the plaintiff in the apartment residence of the plaintiff.

91. As a pretext for such invasion and abuse, Officer Fields would only state in response to repeated direct questions that someone whom he refused to identify had reported that the plaintiff "was seen leaving the court house carrying a gun," which is false in entirety.

92. Aforementioned acts by defendants Miller, Fields, and Evans were without probable cause or reason to believe that any crime had been committed or was about to be committed, or other legitimate reason.

93. At aforementioned times and places on July 1, 1977, the defendants Miller, Fields, and Evans and others with whom they conspired knew at the time they conspired that the plaintiff was extemely disappointed and emotionally upset and would be very susceptible to emotional distress and other damage herein alleged which they intentionally proximately caused by aforementioned outrageous acts and conduct.

94. On May 11, 1976, Betty Berger, an employee of BCHA, was deposed by the plaintiff in Civil Action No. 28036, complaint EXHIBIT B.

95. During aforementioned deposition Betty

Berger testified favorably for the plaintiff and unfavorably as to the defendants and particularly concerning Gwen Stieber and BCHA who were defendants in that action and herein.

96. Subsequent to May 11, 1976, at various times known to defendants, in BCH, Stephen D. Dawson, pursuant to conspiracies aforementioned, representing and acting as agent for defendants BCHA, Gwen Stieber, Paul Renner, and St. Paul Insurance Companies, with apparent authority to act for Stieber and BCHA, knowing the plaintiff would learn of such acts, harassed, annoyed, intimidated and proximately caused Betty Berger to feel threatened with employment insecurity unless she changed her testimony to favor the defendants, which acts and personal feelings Betty Berger communicated contemporaneously to the plaintiff, and the plaintiff was thereby

proximately damaged as herein alleged.

97. Betty Berger refused to change her truthful testimony to make it favorable to the defendants.

98. Betty Berger reported the foregoing acts of Stephen Dawson to defendant Charlotte Pelletier, adminstrator of BCH, in BCH at sometime between May 11, 1976, and February, 1977, which time is known exactly by defendants.

99. In deposition of Donald E. Tyler, plaintiff herein, in Civil Action 28036, on February 4, 1977, in 3131 Security Life Building, Denver, Colorado, it was determined by Stephen Dawson pursuant to conspiracy that for certain his aforementioned conduct was known by the plaintiff, and such conduct was made known to counsel and parties in that action.

100. All parties in Civil Action 28036 and their legal counsel, including Marks, Larsen, Mott,

BCHA, Stieber, V. James Robison and Montgomery Little Young Campbell & McGrew, P.C., and insurers, defendants Hartford and St. Paul Insurance Companies approved and ratified aforementioned acts of Dawson, all of which were done in their behalf and for their benefit.

101. As a proximate result of the foregoing and pursuant to conspiracies aforementioned, knowing the plaintiff would learn of their acts, to further wrongfully cause Betty Berger to suffer anxieties, and to set an example for others associated with BCH who might exercise freedom of speech and thereby testify truthfully in favor of plaintiff Tyler in lawsuits, in approximately July or August, 1977, the exact time of which is known to defendants, defendants Pelletier and BCHA acting for the benefit of defendants Stieber and St. Paul Insurance and other defendants herein, and

with their approval and ratification, reduced the working hours of Betty Berger and reduced her pay so that she was forced to resign from employment at BCH, a public community hospital, and seek employment elsewhere.

102. Betty Berger related the foregoing to the plaintiff contemporaneously and the plaintiff was proximately caused damage alleged herein.

103. Because of support expressed for the plaintiff Tyler related to aforementioned then pending lawsuits, to suppress their testifying truthfully for plaintiff Tyler, to set examples for others, and pursuant to conspiracies aforementioned in paragraphs 26 and 27 knowing the plaintiff would learn of their outrageous acts, Pelletier and BCHA and other defendants herein pursuant to conspiracy, reduced the privileges of Buel Hutchinson, M.D., to work in BCH on or about August 16, 1976,

without due process of law and in breach of by laws of the medical staff and so insulted and humiliated him as to force him to resign from the medical staff of BCH, and defendant Larsen, acting under color of office of president of the medical staff of BCH and pursuant to conspiracies herein alleged, without jurisdiction and in breach of bylaws, reduced the privileges of Merrill Shidler, M. D., to practice medicine in BCH on September 5, 1975, and harassed and insulted him and forced him to leave Colorado to practice medicine in another state; and pursuant to aforementioned conspiracies the plaintiff contemporaneously learned of such outrageous acts directed against his friends and supporters to cause him emotional distress and he was proximately damaged as herein alleged.

104. As a proximate result of the foregoing acts of defendants, and each and all of them, the plaintiff was damaged in his medical practice, forced to quit practicing medicine in 1977, forced to sell his medical office in February, 1978, forced to leave Colorado in April, 1978, and such damage continues and prevents him from practicing medicine and surgery.

105. Af oremention ed acts of defendants committed pursuant to conspiracy and under color of state law have deprived the plaintiff of valuable rights as herein alleged which are guaranteed by the Constitution of Colorado, Article II, Sections 3, 6, 7, 10, 13, and 25 and by the First, Second, Fourth, Fifth, 7th, 9th, Thirteenth, and Fourteenth Amendments of the U.S. Constitution without due process of law.

106. All parties herein have been and are

engaged in interstate commerce in matters herein alleged.

107. Aforementioned contract between Hartford and CMS, EXHIBIT A, which has caused the plaintiff damage as herein alleged, was designed to and makes every physician who is a member of or may become a member of CMS substantially financially interested and subject to medical society abuse in every lawsuit of the type involved herein (see Exhibit B) and in suits alleging malpractice of Colorado physicians, and the insidious nature of such is compounded by court rules restricting admission of evidence of insurance in trial and at peril of mistrial order if plaintiffs attempt such.

108. Aforementioned contract and combination between Hartford and CMS was designed to and does obstruct and interfere with justice in courts to citizens of Colorado and of other

States who rightfully institute lawsuits against Colorado physicians insured by Hartford for acts of the types involved herein or suits because of damages due to negligence in medical care by such physicians and in trial of which other Colorado physicians might testify and whose testimony may be critical and essential to the outcome of the case. All Hartford-insured Colorado physicians are financially interested, and any Colorado physician and any person employed in the medical profession can be expected to be harassed by the financially interested CMS and its members, as witnesses and the plaintiff herein have been, and in other ways within the power of such persons and the CMS which extends to other states, if the physician is the plaintiff as in cases herein involved, or if a physician or any other person employed in the medical profession is

expected to testify or does testify favorably for the plaintiff. Justice in courts have been thus interfered with in countless cases and including trial of this instant lawsuit and related lawsuits.

109. Aforementioned contract and combination tends to limit competition and tends to create a monopoly in the type of insurance to which it pertains which involves interstate commerce, and it tends to create a monopoly and to limit the practice of medicine in Colorado to those who belong to CMS which involves interstate commerce, and such combination is in these and otherways aforementioned inimical to proper public interest in interstate commerce.

110. Aforementioned contract and conspiracy, which has damaged the plaintiff as herein alleged, is an unlawful restraint of interstate commerce and the plaintiff is entitled to treble damages and other relief in accord with

Title 15 § 15 of the United States Code.

111. Aforementioned acts of the defendants and each of them have been committed and continue to be committed maliciously, willfully and wantonly, and in reckless disregard of the rights and feelings of the plaintiff, and the plaintiff is entitled to exemplary damages.

112. As a proximate result of the foregoing combination and conspiracy, truthful evidence and freedom of speech is suppressed and the plaintiff's case in this instant lawsuit is irreparably damaged.

113. As a proximate result of the foregoing combination and conspiracy, the defendants and each of them proximately irreparably damaged the plaintiff's prosecution of other cases, including 80-F-1305 pending in this Court, 77CV0782 District Court for Jefferson County, Colorado, 26884, 28056, and 28036 District Court for Adams County, Colorado,

and they proximately caused his loss of 26884 and 28056, and they proximately caused decrease in the jury verdict in 28036 (EXHIBIT L) and they proximately caused suppression of evidence and proximately caused enforceable judgment to not be entered on the jury verdict in 28036 in the amount of $730,000.00 all to the irreparable damage of the plaintiff and in his profession.

114. As a proximate result of the foregoing, the plaintiff has been wrongfully deprived of the use of payment for damages to which he is rightfully entitled and interest thereon.

115. The defendants herein have committed the foregoing acts intentionally and with knowledge that the plaintiff's only possible remedy would be through lawsuits and they are for that and other reasons responsible and liable for all expenses and damages resulting therefrom.

116. Aforementioned acts of the defendants

and each of them have proximately caused and continue to cause the plaintiff humiliation, anxieties, mental suffering and severe emotional distress in an amount in excess of ten million dollars in value ($10,000,000.00).

117. Aforementioned acts of the defendants and each of them have proximately caused special damages related in paragraphs 112, 113, 114, 115, and they proximately caused and continue to cause the plaintiff loss of earnings, loss of value of his established medical practice, loss of time, loss of earning capacity, loss of professional opportunities, loss due to replacement costs of an office building and land forced to be sold, expenses and time expended seeking employment elsewhere, storage and moving expenses, court costs, attorneys fees and other expenses of lawsuits and trials, damage to his professional and personal reputations, and other special damage

damage in excess of five million dollars ($5,000,000.00). Such special damages are continuing and the plaintiff requests permission to insert the amount herein and in the prayer for relief when it is finally determined in amount.

SECOND CLAIM FOR RELIEF: OUTRAGEOUS CONDUCT WHICH INTENTIONALLY INFLICTED AND CAUSED THE PLAINTIFF TO SUSTAIN AND SUFFER SEVERE EMOTIONAL DISTRESS

118. Paragraphs 1 through 117 are incorporated herein by this reference.

119. The aforementioned conduct and acts, and each of them, of the defendants jointly and each of them were committed intentionally for the purpose of causing the plaintiff to suffer severe emotional distress.

120. The aforementioned conduct and acts proximately caused and continue to cause the

plaintiff to suffer severe emotional distress and other damage as alleged herein.

WHEREFORE, the plaintiff prays for relief from the defendants herein and judgment jointly and severally as follows:

1. Special damages;

2. General damages in amount of ten million dollars ($10,000,000.00);

3. Treble damages;

4. Costs of suit;

5. Attorneys fees;

6. Interest from the earliest time in accord with Colorado statutes applicable to the judgment;

AND exemplary damages from each of the defendants severally as follows:

7. $10,000,000.00 from Hartford Fire Insurance Company;

8. $10,000,000.00 from Colorado Medical Society;

9. $5,000,000.00 from St. Paul Insurance Companies;

10. $1,000,000.00 from Warren & Sommer, Inc.;

11. $1,000,000.00 from Brighton Community Hospital Association;

12. $1,000,000.00 from Galen Marks, M.D.;

13. $1,000,000.00 from Robert Larsen, M.D.;

14. $1,000,000.00 from Grant Miller, M.D.;

15. $1,000,000.00 from Herbert Rothenberg, M.D.;

16. $1,000,000.00 from James Henderson, M.D.;

17. $1,000,000.00 from Wilfred Stedman, M.D.;

18. $1,000,000.00 from Joseph H. Poynter, M.D.

19. $1,000,000.00 from Carl McLauthlin, M.D.;

20. $1,000,000.00 from John Mott;

22. $1,000,000.00 from Peter Pryor;

23. $1,000,000.00 from William Buckman;

24. $1,000,000.00 from Thomas Mitchell;

25. $100,000.00 from Institute for Corrective

Practice;

26. $ 20,000.00 from Gwen St ieber;

27. $20,000.00 from Jean Koehly;

28. $20,000.00 from Bernadene Post;

29. $20,000.00 from Charlotte Pelletier;

30. $20,000.00 from Terry Fields;

31. $5,000,00 from Richard Evans

PLAINTIFF DEMANDS A JURY TRIAL OF ALL ISSUES HEREIN

Address of plaintiff:

1092 S.W. 2nd Ave

Ontario, Oregon 97914

By (signed) D.E.Tyler
Donald E. Tyler
(Admitted to practice before this court)

Attorney for plaintiff, pro se

1092 S.W. 2nd Ave

Ontario, Oregon 97914

telephone (503)-889-5109

VERIFICATION OF COMPLAINT

I, Donald E. Tyler, being duly sworn do hereby state under oath that the allegations in the foregoing complaint are true to my knowledge and belief.

(signed) Donald E. Tyler

Donald E. Tyler, affiant

The foregoing was subscribed to and sworn to before me by Donald E. Tyler in Ontario, Malheur County, Oregon on June 5, 1981

(signed) Grace Hammon

NOTARY PUBLIC

My commission expires:

March 31, 1984

(SEAL)

COLORADO MEDICAL SOCIETY

MASTER CONTRACT

No. 659904

HARTFORD FIRE INSURANCE COMPANY

Hartford, Connecticut 06115

(A stock insurance company, herein called the Company ) Hereby Mutually Agrees With The Colorado Medical Society (Herein called Society) as follows:

(This exhibit is not reproduced here because of bulk and expense in reproduction . It consists of 20 typewritten pages, 8 1/2 by 11 inches in size. It is requested that petitioner be allowed to reproduce it later if its contents are in dispute.)

EXHIBIT A

COMPLAINT OF Civil Action 28036, District Court in and for the County of Weld, removed to District Court in and for the County of Adams

(The body of this complaint consists of 30 legal size pages. It is not reproduced here because of size and expense. If its contents become in dispute or become determinative of issues of this petition, petitioner requests permission for later reproduction. Its Exhibits C, D, and F follow labeled in parantheses.)

EXHIBIT B

BRIGHTON COMMUNITY HOSPITAL

1850 EGBERT STREET, BRIGHTON,

COLORADO 80601

PHONE 659-1531 AREA CODE 303

September 26, 1974

Donald Tyler, M.D.

1790 Bridge Street

Brighton, Colorado 80601

Dear Dr. Tyler:

A request for corrective action concerning your Emergency Room care and conduct has been received by the Executive Committee. In accordance with the By-Laws of the Brighton Community Hospital Medical Staff, the Executive Committee requests your attendance with the Executive Committee at 12 o'clock noon on October 17, 1974 at the Brighton Community Hospital.

Yours truly,

(signed) Galen D. Marks

Galen Marks, M.D.,

Chairman, Executive

Committee

( EXHIBIT C )

Accredited by the Joint Commission of

Accreditation of Hospitals

BRIGHTON COMMUNITY HOSPITAL

1850 EGBERT STREET, BRIGHTON,

COLORADO 80601

PHONE 659-1531 AREA CODE 303

October 23, 1974

Donald E. Tyler, M. D.

1790 Bridge Street

Brighton Colorado

Dear Dr. Tyler:

Your hearing date has been rescheduled for

Thursday, October 31, 1974, 12:00 noon at

Brighton Community Hospital.

Sincerely,

(signed Galen M. Marks, M. D. by J. K.)

Galen M. Marks, M. D.

Chief of Medical Staff

( EXHIBIT D )

Accredited by the Joint Commission on

accreditation of hospitals

BUSINESS MINUTES Date October 31, 1974

EXECUTIVE STAFF MEETING

Minutes of the meeting of the Executive Staff The meeting was held in the Conference Room at the Brighton Community Hospitals at 12:00 noon, 1974, October 31st.

ATTENDING MEETING: Dr. Galen Marks, President

Dr. Robert Larsen, Vice President

Dr. Bill Waddell, Secretary

Mr. Orrel Daniels, Hospital Legal Counsel

John Vowell, Hospital Administrator

The meeting was called to order at 12:00 noon. The purpose of the meeting as called by the President of the Staff was in accordance with the Medical Staff By-Laws provisions covering hearings. The hearing to be conducted was that of Dr. Don Tyler. Dr. Tyler had been notified by certified

mail of the time and place of the hearing.

1:45 P.M. Dr. Tyler had not appeared at the meeting. The meeting adjourned. No action taken.

(signed) John Vowell

John Vowell, Administrator

( EXHIBIT F)

gaylor's FOOD STORE, INC.

540 Bridge Street . Brighton, Colo

July 3, 1974

Dr. Galen Marks

Chief of Staff

Brighton Community Hospital

Dear Galen:

On Thursday June 27th, 1974 at approximately 5:30 PM I brought my Aunt Miss Margaret Schroer to Brighton Community Hospital for emergency treatment. She received a bad cut on her leg from a lawn mower accident which needed medical attention. The action taken by Dr. Tyler who was on duty was very distressing to me, my family and friends. After discussion with Dale Alter I am writing this letter to the Board and Chief of Staff asking that the situation be reviewed and corrected.

The decision by Dr. Tyler was that my Aunt Miss Schroer should seek medical attention elsewhere because she was not and probably would not be a patient of his. The whole discussion and situation was very unprofessional and is not in my opinion the reason for which Brighton Community Hospital was built. It is my feeling that the Hospital was built to serve all citizens of the Brighton area and in particular administer emergency treatment to anyone regardless of who they are and regardless of who there Doctor is.

This type of situation can only hurt the Image of Brighton Community Hospital and I support action to correct what I feel is the wrong approach in dealing with people who need attention and the service of Brighton Community Hospital.

Sincerely,

(signed) Donald B. Gaylor

Donald G. Gaylor

November 1, 1976

D. E. Tyler, M. D.

1790 Bridge Street PERSONAL AND

Brighton, Colorado CONFIDENTIAL

Dear Dr. Tyler:

The Risk Management Committee of the State Medical Society has been made aware of the suits which you have pending against members of the Staff and Board of the Brighton Community Hospital. It is furthermore aware of a letter written by the husband of a patient that you contacted in Brighton Community Hospital Emergency Room which apparently was one of the instigating factors in your suit against this gentleman. This information is hearsay only.

The Risk Management Committee of the

EXHIBIT D

Colorado Medical Society exists for the purpose of investigating areas where there is potentially an increased risk of malpractice cases against physicians insured by the Colorado Medical Society-Hartford program. Since, after reviewing some 600 claims in this state over five and one half years, the Risk Management Committee is aware that the angry patient is the one most likely to sue, the Committee is requesting your written permission to examine a random sample of hospital records at the Brighton Community Hospital in which you were the primary physician. It is our understanding that you have practiced very little, if any, at that hospital in recent months or perhaps the last year or two and consequently the permission would have to include a review of the cases when you were more active there. The reason for this review is to assure the

Committee that the quality of these records is sufficient for defense, if a case were brought against you (with or without merit).

For your information House Bill 91 passed by the last session of the Colorado Legislature and signed into law effective July 1, 1976, gives permission to committees such as the Risk Management Committee to request such permission in writing. If you wish, a copy of this bill may be obtained from the headquarters of the Colorado Medical Society. The Risk Management Committee would request such permission in writing no later than 30 days after receipt of this letter.

Sincerely,

(signed) Robert S. Brittain, M.D.

ROBERT S. BRITTAIN, M.D.

Chairman, Risk Management Committee

CMS

COLORADO MEDICAL SOCIETY

1601 East 19th Avenue

Denver, Colorado 80218-Phone (303)534-8580

Donald E. Tyler, M.D.

1790 Bridge Street

Brighton, Colorado

PERSONAL AND CONFIDENTIAL

January 12, 1977

Dear Dr. Tyler:

As you were advised by my letter of November 1, 1976 the Risk Management Committee of the Colorado Medical Society requests permission to examine hospital records of yours at Brighton Community Hospital over the past three years. This request is specifically in reference to emergency room patients.

You should be advised that failure to cooperate with the Risk Management Committee of the Colorado Medical Society would require that that Committee so inform

the Hartford Insurance Company, your carrier.

The Committee expects written permission to examine the above mentioned records to be received by a representative of that Committee at 3501 South Corona Street #7, Englewood, Colorado 80110 no later than January 31, 1977.

Very sincerely yours,

(signed) Robert S. Brittain M.D.

ROBERT S. BRITTAIN, M.D.

MEMBER

Risk Management Committee

(signed) Wilfred Stedman, M.D.

WILFRED STEDMAN, , M.D.

Chairman

Risk Management Committee

WARREN & SOMMER INCORPORATED

SUITE 500/3855 EAST EXPOSITION

DENVER, COLORADO 80209

TELEPHONE 303-744-3711

March 29, 1977

Donald E. Tyler, M.D.

1790 E. Bridge Street

Brighton, Colorado 80601

Dear Dr. Tyler:

On November 1, 1976, the Risk Management Committee of the Colorado Medical Society requested permission to look at your medical records. On November 28, 1976, Dr. Robert S. Brittain received a supoena from you requesting a deposition from your attorney. This deposition was carried out on January 4, 1977 and, following that deposition, Dr. Brittain advised your attorney that the Risk Management Committee would still want

permission to examine your ER records.

As of March 28, 1977, the Risk Management Committee has not received your permission to review your records. I would like to point out that the Risk Management Committee has reviewed (with the doctor's permission) many doctors records in Colorado.

Your professional Liability coverage is due for renewal on December 11, 1977, and this is to advise you we will be unable to offer renewal of the Professional Liability coverage because of your failure to cooperate with the Risk Management Committee of the Colorado Medical Society.

Should you have any questions, please do not hesitate to give me a call.

Sincerely,

(signed) Bill Buck---

William M. Buckman

Vice President

WMB/jg

cc: Wilfred Stedman, M.D.
Robert S. Brittain, M.D.
Thomal Mitchell, Hartford

ONE OF THE SEVENTY WORLDWIDE

OFFICES OF ASSUREX INTERNATIONAL

INSURANCE BROKERS

Denver Regional Office

820 Grant Street

Denver, Colorado 80203

Telephone:(303)837-1515

THE HARTFORD

April 26, 1977

Donald E. Tyler, M.D.

1790 East Bridge Street

Brighton, Colorado

Dear Dr. Tyler:

The underwriting department of Hartford has been kept abreast of the on-going efforts of the Risk Management Committee of the Colorado Medical Society to inspect your emergency room records at Brighton Community Hospital. We understand numerous requests have been made to inspect records whether you are keeping adequate emergency room records.

Hartford works in close cooperation with

the Risk Management Committee and, among other things, uses records and information concerning medical records for premium computation.

One of the conditions of your policy with the Hartford, Condition 1 on page 4 of the General Policy Provisions section provides the insured "... shall send copies of such records to the company ... at such times during the policy, as the company may direct." We feel compliance with this policy condition is a condition precedent to any duty on Hartford's part to continue coverage beyond your renewal date on December 11, 1977, and hereby formally demands the opportunity to review your emergency room records at Brighton Community Hospital for the past three years.

I also want to advise you that Hartford's

contract with the Colorado Medical Society provides the company may refuse to renew a physician in the event he or she fails to cooperate with the Risk Management Committee. Please reconsider your position relative to the examination of your records as a continued refusal to provide these records to the Hartford may well lead to a decision not to renew your coverage come December 11, 1977.

Please call me if you have any questions.

Yours very truly,

(signed) Thomas H. Mitchell

Thomas H. Mitchell

Underwriter

Casualty Department

TM:gn

WARREN & SOMMER INCORPORATED

SUITE 500/3955 East Exposition

DENVER, COLORADO 80209

Telephone 303-744-3711

April 26, 1977

Donald E. Tyler, M.D.

1790 Bridge Street

Brighton, Colorado

Re: Donald E. Tyler vs Gaylor, et al

Dear Dr. Tyler:

You may recall I wrote you on behalf of the Hartford Insurance Company on March 29, 1977, concerning problems encountered by the Risk Management Committee of the Colorado Medical Society in its attempt to review your emergency room records at Brighton Community Hospital. You were then advised Hartford would be unable to renew your policy on December 11, 1977, your annual renewal date. The notice of

non-renewal was based solely on your refusal to permit the Committee to review your emergency room records. The purpose for that request was to determine whether medical care rendered by you was being adequately documented in the event you were to be sued.

Dr. Brittain of the Risk Management Committee has recently advised Hartford the Committee wishes to give you the opportunity to discuss this matter with the Committee before it makes any final recommendations concerning non-renewal. I've also been advised a representative of the Committee has written you in this regard.

Accordingly, Hartford plans to reserve its decision on non-renewal until you meet with the Committee and the Committee has

made further recommendations.

Without waiver of any rights under the policy, and more specifically, the right to contend your refusal to cooperate with the Committee is proper grounds for non-renewal, Hartford is for the time being withdrawing the notice of non-renewal as set forth in my letter of March 29, 1977.

I'm sure you understand the request to examine your records is not personal and was not and is not intended to be a reflection on the way you practice medicine. Similar requests have been directed to numerous doctors in an effort to evaluate the manner in which records are kept and to assist and educate these physicians. I urge you to cooperate with Hartford and the Committee in permitting review of your records.

Sincerely,

(signed) Bill Buckm---

William M. Buckman

Vice President

WMB/jg

cc: Wilfred Stedman, M.D.

Herbert J. Rothenberg, M.D.

James A. Henderson, M.D.

Robert S. Brittain, M.D.

CMS

COLORADO MEDICAL SOCIETY

1601 East 19th Avenue

Denver, Colorado 80218-Phone (303) 534-8580

April 26, 1977

PERSONAL AND CONFIDENTIAL

Donald E. Tyler, M.D.

1790 East Bridge Street

Brighton, Colorado

Dear Dr. Tyler:

I have written you on two separate occasions, on November 1, 1976, and on January 12, 1977, requesting on behalf of the Risk Management Committee of the Colorado Medical Society, permission to examine your hospital records at Brighton Community Hospital over the past three years. That request to examine records, outstanding since November 1, 1976, was also verbally communicated to you at the time of my

deposition on January 4, 1977, and thereafter to your former attorney, Mr. Mitchem.

Because of your failure to cooperate with the Risk Managemnt Committee, the Committee recommended that Hartford refuse to renew your professional liability coverage.

Although the Committee's recommendation is that your coverage not be renewed on the annual renewal date, we want to give you the chance to discuss this matter with the Committee. We want to discuss this matter with you personally before making any final recommendation to Hartford concerning non-renewal.

The Committee has now asked that Hartford reserve any final decision whether to renew your policy until we've had a chance to discuss this matter with you and make further recommendations.

Would you be kind enough to give me a call and let me know whether you would be willing to meet with the Committee to discuss this matter?

Our next committee meeting is set for Monday, May 9, 1977, at 8:30 P.M. at Colorado Medical Society, 1601 East 19th Avenue, Denver, Colorado. If you don't contact me, please consider this letter as a formal request that you meet with the Committee on May 9, 1977, to discuss the matters of your cooperation with the Committee and the Committee's recommendation concerning non-renewal of coverage. If you fail to attend the meeting, the Committee will make a final recommendation against renewal of coverage on that date. In that event you will again be notified of our recommendation against renewal and will have 30 days from your receipt of

notification of non-renewal to appeal this decision to the Board of Trustees of the Colorado Medical Society.

Very sincerely yours,

(signed) Robert S. Britt--- MD

Robert S. Brittain, M.D.

Member

Risk Management Committee

RSB/mhs

CMS
COLORADO MEDICAL SOCIETY

1601 East 19th Avenue

Denver, Colorado 80218. Phone (303)534-8580

August 23, 1977

Donald Tyler, M. D.

1790 East Bridge St.

Brighton, CO 80601

(CERTIFIED MAIL)

Dear Dr. Tyler:

The Risk Management Committee of the Colorado Medical Society has received information from past Emergency Room records that your hospital records may be deficient in documentation of history, physical, and patient instruction. The Committee is requesting permission for a physician selected by them to inspect your records at whatever hospital you have used

EXHIBIT J

to see Emergency patients in the past two years and to report back to the Risk Management Committee. Would you please complete the enclosed form and return it to me.

For your information, 13-90-107, C.R.S. 1973, as amended allows committees such as the Risk Management Committee of the Colorado Medical Society to examine records of patients if the physician gives such permission. Permission of the patient is not required. If you have any questions, I can be reached at 442-4660.

Very sincerely,

(signed) J.H. Poynter

Joseph H. Poynter, M.D.

Chairman, Risk Management Committee

JHP:pjc

CMS

COLORADO MEDICAL SOCIETY

1601 East 19th Avenue

Denver, Colorado 80218. Phone(303)534-8580

TO: Chairman, Risk Management Committee

Colorado Medical Society

(Certified Mail)

I, Donald Tyler, M.D., do hereby authorize a representative of the Risk Management Committee of the Colorado Medical Society to examine my medical records at whatever hospitals I have used to see Emergency patients in the past 2 years and to report those findings back to the Risk Management Committee. I understand that 13-90-107, C.R.S. 1973, as amended, allows committees such as the Risk Management Committee of the Colorado Medical Society to examine records of patients if the physician gives

such permission. Permission of the patient is not required.

(unsigned)
(Signature) Donald E. Tyler, M.D.

(undated)
(date)

DONALD E. TYLER, M.D.

UROLOGIST

1790 East Bridge Steeet

Brighton, Colorado 80601

Telephone 659-4581

September 9, 1977

Joseph H. Poynter, M.D.

Chairman, Risk Management Committee

2750 Broadway

Boulder, Colorado

Dear Doctor Poynter:

I have received the request of you and those you represent to examine the records of my patients. You have stated that my records may be deficient.

I request the following information:

1. Who reported information concerning records of my patients to the Risk Management Committee?

2. Who reported information concerning

records of my patients to you?

3. When was each of those reports made?

4. Where were each of those reports made?

5. What were the contents of each of such reports?

6. What patients' records are considered to possibly be deficient?

7. Who (names please) determined that they may be deficient?

8. In what respects are each of such records considered to possibly be deficient?

9. Have you examined any records of my patients? If so, please identify which records you examined with exactness, and who supplied them to you, when and where.

10. Has the committee examined any records of my patients? If so, please identify exactly which records were examined and who supplied them, and when and where they were supplied.

11. By whose permission were each of such records examined?

12. What is the purpose of your request? Of course, you are aware that the Risk Management Committee has already made a recommendation that my professional liability insurance not be renewed and this has been acted upon. What do you intend now? You are undoubtedly aware that matters with which you are involving yourself are properly before two courts of law.

My patients expect me to not reveal confidences. It is against my ethics to not cause a breach of that expectation and I respect and observe the same ethics concerning patients of other physicians. It is recognized, and by your letter, that those may not be the same as your ethics or those

of the organizations which sponsored the legislation you cited.

I hope you will cooperate and supply me with the above information so that I might have some idea of your interest.

I do not know of any patients whom I have seen as emergencies in any hospital Emergency Room in the past two years. I sincerely request that you reconsider your involvement in this matter.

Yours truly,

(signed) D.E. Tyler

Donald E. Tyler, M.D., J.D., FCLM

cc:

Robert Brittain, M.D.

Herbert Rothenberg, M.D.

James Henderson, M.D.

Wilfred Stedman, M.D.

Carl McLauthlin, M.D.

VERDICT FOR PLAINTIFF

STATE OF COLORADO, )
) ss.
County of ADAMS, )

IN THE DISTRICT COURT WITHIN

AND FOR SAID COUNTY

DONALD E. TYLER, Plaintiff )
)
vs. ) VERDICT
)
GALEN MARKS, ROBERT LARSEN, )
JOHN VOWELL, and BRIGHTON )
COMMUNITY HOSPITAL )
ASSOCIATION, Defendants )

We, the Jury find the issues herein joined for the Plaintiff Donald E. Tyler and assess his actual damages at the sum of $682,000.00 dollars ($682,000.00), assessing $170,500.00 against Defendant Marks, $170,500.00 against Defendant Larsen, $136,400 against Defendant Vowell,

$204,600.00 against Defendant Brighton Comm. Hospital. We assess his exemplary

damages at the sum of 48,000 dollars ($48,000.00), assessing $12,000.00 against Defendant Marks, $12,000.00 against Defendant Larsen, $12,000.00 against Defendant Vowell, $12,000.00 against Defendant Brighton Comm. Hospital.

(signed) A. A. Ellis
Foreman

QUESTIONS TO BE ANSWERED BY THE JURY

The Court instructs you to answer each of the following questions. Please answer each question yes or no.

1. Did Plaintiff suffer damage (actual or nominal) based upon breach of contract related to the corrective action procedure provided in the by laws? (Yes or No) YES

2. If question number 1 is answered "Yes," is Defendant Marks liable for such damages ? (Yes or No) YES

3. If question number 1 is answered "Yes," is Defendant Larsen liable for such damages? (Yes or No) YES

4. Did Plaintiff suffer damage based upon a conspiracy which caused his name to be omitted from the emergency room call list? (Yes or No) YES

5. If question number 4 is answered "Yes," is

Defendant Marks liable for such damages?

(Yes or No) YES

6. If question number 4 is answered "Yes," is Defendant Larsen liable for such damages?

(Yes or No) YES

7. If question number 4 is answered "Yes," is Defendant Vowell liable for such damages?

(Yes or No) YES

8. Did Plaintiff suffer damages based upon improper denial or reappointment to the medical staff? (Yes or No) YES

9. If question number 8 is answered "Yes," is Defendant Marks liable for such damages?

(Yes or No) YES

10. If question number 8 is answered "Yes," is Defendant Larsen liable for such damages?

(Yes or No) YES

11. If question number 8 is answered "Yes," is Defendant Vowell liable for such damages?

(Yes or No) YES

12. Did Plaintiff suffer damages based upon wrongful interference with his medical practice by any defendant? (Yes or No) YES

13. If question number 12 is answered "Yes," is Defendant Marks liable for such damages? (Yes or No) YES

14. If question number 12 is answered "Yes," is Defendant Larsen liable for such damages? (Yes or No) YES

15. If question number 12 is answered "Yes," is Defendant Vowell liable for such damages? (Yes or No) YES

16. If question number 12 is answered "Yes," is Defendant Brighton Community Hospital Association liable for such damages? (Yes or No) YES

17. Did Plaintiff suffer damages based upon Brighton Community Hospital Association ratifying any of the following alleged acts of

defendant's:

a. A conspiracy which caused Plaintiff's name to be omitted from the emergency room call list? (Yes or No) YES

b. Improper denial of the reappointment of Plaintiff to the medical staff? (Yes or No) YES

c. Intentional interference with Plaintiff's medical practice? (Yes or No) YES

18. Did plaintiff suffer damage based upon Defendant Marks abusing his privilege, by acting in bad faith, in connection with the writing of the letter of September 26, 1974? (Yes or No) YES

19. Did Defendant Vowell defame Plaintiff on December 29, 1974? (Yes or No) NO

(signed) A. A. Ellis
Foreman

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

| | |
|---|---|
| DONALD E. TYLER, | |
| Plaintiff, | Civil Action |
| vs. | No. 81-F-1287 |
| HARTFORD FIRE INSURANCE COMPANY, COLORADO MEDICAL SOCIETY, et. al., | JUDGMENT |
| Defendants | |

PURSUANT to and in accordance with the Order of Dismissal with Prejudice and Judgment for Defendants entered by the Honorable Sherman G. Finesilver, District Judge, on May 25, 1982, bench ruling of April 21, 1982, incorporated herein by reference it is

ORDERED that judgment enter pursuant to said Order, which is incorporated herein by reference. It is

FURTHER ORDERED that costs are to be borne by the respective parties.

DATED at Denver, Colorado this 25th day of May, 1982.

FOR THE COURT:

(signed) James R. Manspeaker

JAMES R. MANSPEAKER, CLERK

ENTERED ON THE DOCKET MAY 25, 1982

JAMES R. MANSPEAKER

CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 81-F-2187

| | |
|---|---|
| DONALD E. TYLER, Plaintiff, vs. HARTFORD FIRE INSURANCE CO., et al., Defendants. | ORDER OF DISMISSAL WITH PREJUDICE AND JUDGMENT FOR DEFENDANTS |

This matter came before the Court for hearing on numerous pending motions which have been filed by the defendants. These motions include a Motion for Entry of Judgment filed on March 18, 1982 by defendants Hartford Fire Insurance Company, Colorado Medical Society, Institute for Corrective Practice, Herbert Rothenberg, M.D., Wilfred Stedman, M.D., James A. Henderson, M.D., Joseph H. Poynter, M.D., Carl McLaughlin, M.D., Galen Marks, M.D.

Robert Larsen, M.D., Thomas H. Mitchell and Grant Miller, M.D.; a Motion for Entry of Judgment filed on March 22, 1982, by defendants Warren & Sommer, Inc. and William Buckman; a Motion for Entry of Judgment filed on March 23, 1982, by defendant Peter Pryor; a Joinder in Motion for Entry of Judgment filed March 24, 192, by defendant St. Paul Insurance Companies; a Motion for Entry of Judgment filed on March 25, 1982, by defendants Richard Evans and Terry Fields; and a Joinder in Motion for Entry of Judgment filed on April 2, 1982, by defendant John Mott and a Joinder in Motion for Entry of Judgment filed on April 2, 1982, by defendants Brighton Community Hospital Association, Charlotte Pelletier, Jean Koehly, Bernadene Post and Gwen Stieber.

This case was initiated on July 22, 1981, when plaintiff filed his complaint. Although

the plaintiff appeared pro se throughout this litigation, he is an attorney at law who has been admitted to practice before this Court since October 4, 1968.

The Complaint named 24 individual and corporate defendants and set forth a myriad of charges which appeared to stem from cancellation of plaintiff's malpractice insurance, the circumstances surrounding his termination from Brighton Community Hospital and the conduct of other litigation which plaintiff has from time to tme initiated.[1, 1a] It sought compensatory and

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1. In addition to this case, this Court has had pending before it three other cases brought by Mr. Tyler: 79-F-864, 80-F-1305 and 81-F-590.

1a. (This footnote by petitioner). None of the mentioned cases are in evidence. Previously the Court specifically did not take judicial notice of other lawsuits. No relevance of the noted cases has been presented. There has been no hearing concerning the noted cases. 79-F-864 was brought against

Hartford and a lawyer it employed to defend Tyler, its insured, against a malpractice suit Hartford and others caused to be brought in collusion against Tyler. (That is the type of thing they were interested in doing in trying to examine all medical records of Tylers' patients, in addition to reasons alleged herein.) The case was obviously without merit. The lawyer was not properly working to defend the case, but was deceitfully working to defeat Tyler. Tyler dismissed the case prior to responsive pleading after the lawyer withdrew as counsel. Subsequently, at Tyler's insistence, the case against Tyler was settled for a nominal amount. Tyler subpoenaed the person who brought that lawsuit and his attorney to take their depositions in a related case before this Court (Petition No. 81-2139, denied) That discovery was refused, and as a result of an exparte hearing between the court and Hartford's counsel at that time for protective orders, all discovery was stayed. Conclusions are obvious, and that conclusion is not that Tyler did not have a case.

80-F-1305 and 81-F-590 involved cases in which counsel for Brighton Community Hospital was involved and was defendant in one. He settled them for $100,000 for damages not included in this or any other lawsuit except for a nominal amount. The bond ordered herein might be related, but its relevance has not been shown. It may be related psychologically in the way shown in Hemingway's famous Old Man and the Sea.

punitive damages in excess of 15 million dollars on a wide range of claims including antitrust, civil rights, contract, conspiracy and numerous torts.

The Complaint was extemely lengthy and difficult to understand. It made repeated allegations of a long series of wrongful acts, but it was impossible to determine what the specific acts were, what the precise claims were or what claims were made against whom.

It also contained numerous allegations which were in many respects identical to those brought by Mr. Tyler in other cases wherein final judgments have been rendered against him. [2, 2a]

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2. Tyler v. The Hartford Insurance Group, Francis Fry and Robert S. Brittain, Colorado Court of Appeals No. 81 CA 0157 (1981)

2a. (This footnote by petitioner). The case aforementioned is not in evidence. The Court previously refused to take judicial notice. (Page A-68). The case was before this Supreme

It also contained numerous allegations charging various libels and slanders by several defendants which occurred in 1976 and 1977, and for which any action would be barred by the operation of Colorado's one year statute of limitations, C.R.S. 1973 § 13-80-102.

Jurisdiction was alleged to be founded upon both diversity and the existence of a federal question.

Each of the defendants filed motions attacking the sufficiency of the Complaint and several defendants also requested the Court to exercise its discretion and order plaintiff to post a cost bond.

After spending a considerable period of

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Court as petition for writ of certiorari, No. 81-2139. The relevance of allegations being similar against those defendants has not been shown. It appears to be a compounding of "errors." The Court admits understanding the allegations to this extent, at least.

time to comprehend the Complaint, the Court ruled on the pending motions on February 17, 1982. In its ruling the Court dismissed certain claims or allegations including those dealing with the alleged 1976 and 1977 libels and slanders. Pursuant to Rule 8(e)(1) of the Federal Rules of Civil Procedure, the Court also granted defendants' Motion to Strike the Complaint. The Court did, however, give the plaintiff an opportunity to replead. Specifically, it gave the plaintiff until March 17, 1982, to file a simple, concise and intelligible amended complaint which would correct the numerous deficiencies found in the original, and encouraged plaintiff to retain counsel to assist him in pursuing these matters.

Pursuant to its residual discretionary powers stemming from Rule 83 of the Federal Rules of Civil Procedure and, because of the existence of numerous state claims which

made C.R.S. 1973 § 13-16-102 applicable, the Court also ordered plaintiff to post a cost bond in the amount of $2,000.00 per defendant.

The Court ordered this bond because the plaintiff, by his own allegations, admitted to being unemployed and a resident of another state. Moreover, in ordering the bond that it did, the Court took into consideration the extremely complex nature of the suit, the numerous claims asserted, the plaintiff's likelihood of success on the merits, [3] the number of defendants and the nature of the claims asserted against each, [4]

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3. (Petitioner's footnote) This is the first time the petitioner's likelihood of success is given as a reason for ordering the bond. Although the reason is paradoxical, petitioner admits that the likelihood of his success in a jury trial would be great. The public would readily find the conduct outrageous and it would be outraged at the condoned conspiracy to obstruct justice.

4. (Petitioner's footnote). Understanding of the claims asserted is admitted by the Court.

the probable length of the discovery process and of the case as a whole, the enormous costs of discovery,[5] and the number, nature and results of the other cases which this Court has handled wherein this same plaintiff initiated similar actions.[6]

Thereafter, plaintiff filed in the Tenth Circuit a Petition for Writ of Mandamus And/or Prohibition. In this Petition plaintiff stated that he was "left with no alternative but to stand on his Complaint, which he does. The requirement of the Court that the petitioner amend his

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5. (Petitioner's footnote). No estimated costs of discovery are in evidence. The production of documents Hartford published concerning the plaintiff should not be costly. That is the logical starting point, which discovery has been denied.

6. (Petitioner's footnote). Refer to footnotes 1a and 2a supra. He has been deprived the right to jury trial on some of his cases, in error and in abuses of discretion. Refer to exhibits of complaint, pages A-184 through A-189, for results of one jury trial subject to petition for writ of certiorari, #81-2007(denied). This is the reason for closure of the courts.

Complaint along the lines demanded is impossible, arbitrary, unreasonable, in abuse of discretion, and in excess of jurisdiction." This Petition was denied on March 18, 1982.

On March 26, 1982, the Court scheduled a hearing on all pending Motions of defendants to be held on April 21, 1982, at 2:00 P.M. Plaintiff moved to continue the hearing date and this motion was denied by Minute Order dated April 8, 1982. In a Response to Motion to Enter Judgment filed by the plaintiff on April 8, 1982, the plaintiff stated that he did not intend to file an amended complaint nor did he intend to post any of the specified cost bonds.

On April 21, 1982, the hearing on defendants' pending motions was held as scheduled. Each defendant was represented by counsel. The plaintiff did not appear but,

instead, had sent counsel for the defendants a document entitled "waiver of Hearing." He had not, however, filed the waiver with the Court.[7] The hearing was held and counsel for defendants requested that any dismissal be with prejudice. (The waiver is Defendants' Ex. A.)

As the Court indicated during its ruling on February 17, 1982, the Complaint herein was virtually unintelligible and did not adequately advise the defendants of the nature of the charges against them nor provide them with

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7. (Petitioner's footnote.) The document referred to (Pages A-51 through A-55, Appendix A), was mailed to the clerk of the court on April 15, 1982, certified mail with return acknowledgement of receipt. The return shows that it was received April 19, 1982. The docket file shows it to have been filed on April 26, 1982. This sort of thing is altogether too common for a society that purports to operate with equal justice under the law. The entire handling of the case is of the same character.

information sufficient to enable them to draft a responsive pleading. Although it struck the complaint, the Court did not dismiss the action. Instead, it gave the plaintiff an opportunity to replead by filing an amended complaint which would meet the standards of F.R.C.P. 8(a). The plaintiff has not elected to take advantage of this opportunity. Accordingly, the Court finds that this action should now be dismissed with prejudice.

In addition, and as a separate and independent grounds for dismissal, the Court also finds that plaintiff has purposely failed to post any of the costs bonds which the Court required.

Two defendants, Officers Evans and Fields, requested attorneys fees, and the Court in its discretion denied these requests with leave to renew the request in the future.

WHEREFORE, it is Ordered that this action be and is hereby dismissed with prejudice, and that judgment enter in favor of each defendant, each party to bear his own costs. The Court's bench ruling of April 21, 1982 is incorporated herein.

DATED at Denver, Colorado, this 25 day of May, 1982.

(signed) Sherman G. Finesilver

Sherman G. Finesilver, Chief Judge
United States District Court

ENTERED ON THE DOCKET MAY 25, 1982

JAMES R. MANSPEAKER
CLERK